



**Australian Government**  
**Department of Defence**  
Defence Materiel Organisation

# NEW AIR COMBAT CAPABILITY – INDUSTRY SUPPORT PROGRAM (NACC-ISP)

**CUSTOMER GUIDELINES** JANUARY 2012

DMO



**AusIndustry**  
BUILDING BUSINESS · POWERING PRODUCTIVITY

**ENTERPRISE  
CONNECT**  
Shaping Business, Transforming Industry

[enterpriseconnect.gov.au](http://enterpriseconnect.gov.au)

## About these Customer Guidelines

Throughout these *Customer Guidelines*, terms that are in italics and capitalised are defined terms. Please see Appendix 1 for the relevant definitions.

The information contained in these *Customer Guidelines* helps *Customers* to:

- (a) find out about the *Program*
- (b) determine whether they may be eligible to apply for *Program Funding*
- (c) understand the application process
- (d) be aware of the obligations that will apply under any *Funding Agreement* associated with *Program Funding*

These *Customer Guidelines* should be read together with:

- (a) the *Program Guidelines*;
- (b) the sample *Funding Agreement*; and
- (c) the sample Application Form.

These documents are all available at the [NACC-ISP page on the Enterprise Connect website](#).

These *Customer Guidelines* may be amended from time to time. Any updated version of these *Customer Guidelines* will be published on the *NACC-ISP* page on the *Enterprise Connect* website. *Applicants* should ensure they have the current version of these *Customer Guidelines*, available from the *NACC-ISP* page on the *Enterprise Connect* website. Changes will not be applied retrospectively to applications lodged before the changes were made.

For further information about the *Program* either:

- (a) visit the website at [New Air Combat Industry Support Program](#)
- (b) contact the *DIIC* (*Defence Industry Innovation Centre*) on **(03) 9215 2651**
- (c) or by email: [DefenceIndustryCentre@innovation.gov.au](mailto:DefenceIndustryCentre@innovation.gov.au)

# Table of Contents

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<b>1</b>	<b>About the Program</b>	<b>1</b>
1.1	Overview of the Program	1
1.2	What <i>Program funding</i> does the <i>Program</i> offer?	1
1.3	Governance of the <i>Program</i>	2
<b>2</b>	<b>Applying for Program funding</b>	<b>2</b>
2.1	Preparing and lodging an application for <i>Program funding</i>	3
2.2	Review Stage 1: Eligibility review by <i>AusIndustry</i>	4
2.3	Review Stage 2: Merit review by the Review Panel	4
2.4	Review Stage 3: <i>Program Delegate</i> makes the final decision	5
2.5	Successful applications	6
2.6	Unsuccessful applications	6
<b>3</b>	<b>Eligibility Criteria (Review Stage 1)</b>	<b>7</b>
3.1	Eligible Applicant Criteria	7
3.2	Eligible Application Criteria	11
<b>4</b>	<b>Merit Criteria (Review Stage 2)</b>	<b>12</b>
4.1	Use of Merit Criteria	12
4.2	Merit Criteria	13
<b>5</b>	<b>Entering a Funding Agreement</b>	<b>15</b>
5.1	Process of entering a <i>Funding Agreement</i>	15
<b>6</b>	<b>Further Information</b>	<b>16</b>
6.1	Compliance visits	16
6.2	Taxation obligations	16
6.3	Confidentiality	17
6.4	Conflicts of interest	18
6.5	Feedback and complaints handling procedure	18

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<b>Appendix 1: Definitions</b>	<b>20</b>
<b>Appendix 2: Terms on which applications are sought under the Program</b>	<b>25</b>
<b>Appendix 3: Eligible Expenditure Guidelines</b>	<b>26</b>
<b>Appendix 4: Australian Universities and Publicly Funded Research Agencies</b>	<b>38</b>
<b>Appendix 5: Joint Strike Fighter (JSF) Primes and Original Equipment Manufacturers (OEMs)</b>	<b>39</b>
<b>Appendix 6: Guide to managing your Funding Agreement</b>	<b>40</b>
1 Terms and conditions of the Funding Agreement	40
2 Key obligations under the Funding Agreement	41
3 Variation of a Funding Agreement	48

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# 1 About the Program

## 1.1 Overview of the Program

The Australian Government's Defence Industry Policy Statement - Building Defence Capability: a Policy for a Smarter and More Agile Defence Industry Base announced over \$445 million of Programs that industry can access to improve their competitiveness, their capacity for innovation, their ability to enter export markets, their opportunity to win work locally as well as improve the skills of their workforce.

The *Program* was established in conjunction with the Australian Government approval to acquire the F-35 Joint Strike Fighter (JSF) under Project AIR 6000. The *Program* will provide funding to Australian companies and research organisations to support the development of new or improved capabilities that may enhance the ability to win work in the production, sustainment and follow-on development phases of the *JSF Program*. The *Program*, which opened to applications in August 2011, will receive \$8.2 million over four years to 2014.

The *Program* is delivered and managed by authorised officers from the Defence Materiel Organisation (DMO) and the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE) through the Enterprise Connect Defence Industry Innovation Centre (DIIC) and *AusIndustry*.

The *DIIC* is the first point of contact for customers wishing to know more about the *Program*. For *Customers* who enter the *Program*, the *DIIC* will remain their main point of contact at all stages of delivery.

## 1.2 What Program funding does the Program offer?

The *Program* provides *Program funding* under three streams:

### (a) *Stream A Grants*

Grants of up to \$1,000,000 are available for *Projects* where the *Customer* aims to develop a new or improved *JSF* technology, product, process or service that is required by *entities within the JSF supply chain*, and which can demonstrate more than one *JSF* application.

*Customers* need to match the *Program funding* on a 50:50 basis.

*Customers* will be expected to complete *Projects* in this stream within a period of no more than 36 months (plus any approved extension) or before 30 June 2014, whichever is earlier.

### (b) *Stream B Grants*

Grants of up to \$250,000 are available for projects where the *Customer* aims to develop a new or improved *JSF* technology, product, process or service to

enhance a company's competitiveness in winning work from *entities within the JSF supply chain*; or to engage in a study effort that relates to a capability required by *entities within the JSF supply chain* or the *JSF Program Office*.

*Customers* need to match the *Program funding* on a 50:50 basis.

*Customers* will be expected to complete *Projects* in this stream within a period of no more than 18 months (plus any approved extension) or before 30 June 2014, whichever is earlier.

(c) *Stream C Grants*

Grants of up to \$300,000, with no more than \$100,000 per financial year, are available for research effort assistance that leads to *JSF* industry capability enhancements or manufacturing improvements required by *entities within the JSF supply chain* or the *JSF Program Office*.

*Customers* need to match the *Program funding* on a 50:50 basis.

*Customers* will be required to complete *Projects* in this stream within a period of no more than 36 months, or before 30 June 2014, whichever is earlier.

### 1.3 Governance of the Program

The governance framework for the *Program* is set out in the *Program Guidelines*, which include the *Program* objectives, roles and responsibilities of the parties governing and implementing the *Program*, types of *Program funding* and basic eligibility and merit rules. The *Program Guidelines* are available on the [NACC-ISP page on the Enterprise Connect website](#).

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## 2 Applying for Program funding

Before applying for *Program funding*, *Applicants* should read all of the relevant documents relating to the *Program*, and consider whether they are likely to meet all relevant criteria and/or be competitive compared to other *Applicants*.

Potential *Applicants* should also refer to Appendix 2, which provides the terms on which applications are sought under the *Program*.

There are three main stages in the review of applications. The *Applicant* and their application are first reviewed against the eligibility criteria by *AusIndustry*. The application is then assessed against the merit criteria by the *Review Panel*. Finally, the *Program Delegate* decides whether *Program funding* will be granted, and on what terms and conditions.

## 2.1 Preparing and lodging an application for Program funding

Before lodging an application, *Applicants* are required to contact the *DIIC* and speak with a *Business Adviser*:

Defence Industry Innovation Centre  
Level 5, 329 Thomas Street  
DANDENONG VICTORIA 3175  
Telephone: (03) 9215 2651  
Fax: (03) 9215 2679  
Email: DefenceIndustryCentre@innovation.gov.au

*Business Advisers* can provide advice and guidance on *JSF* industry opportunities and assist *Applicants* in understanding the capabilities sought by *entities in the JSF supply chain*. *Business Advisers* will also provide feedback on eligibility and advise if the *Project* could be suitable for the *Program*. An *Applicant's Business Adviser* will continue to act as the primary contact in the *Program* should their application be successful.

*Applicants* are encouraged to seek feedback on their draft application from their *Business Adviser* before lodging the final version. Feedback will only be provided where the application is complete and all mandatory attachments are included, in at least draft form. *Applicants* may be requested to provide additional documentation where the *Business Adviser* considers the information necessary for the application to be properly assessed.

Where an *applicant* chooses to proceed with an application the *DIIC* will provide them with the *Program* application form. Applications for funding under the NACC-ISP are only available from the *DIIC*:

- A [sample NACC-ISP application form](#) is available on the *NACC-ISP* page on the *Enterprise Connect* website.

*Applicants* can lodge their completed *Program* application form and all supporting documentation online by sending them to [NACC-ISP@innovation.gov.au](mailto:NACC-ISP@innovation.gov.au).

*Acceptance* of all final applications will be acknowledged in writing by *AusIndustry* where it is satisfied that the application is complete and eligible, and can be admitted for assessment. If an application is incomplete or ineligible, the matter will be discussed with the contact person identified on the application form.

The *Acceptance Date* will be specified in the letter confirming that the application has been *Accepted*. *Applicants* should take careful note of the *Acceptance Date*, because it is the earliest date from which they will be able to accrue *Eligible Expenditure* for the purpose of receiving *Program funding*.

*DIISRTE* and the *DMO* are not obliged to accept applications which are not made in accordance with section 2 of these *Customer Guidelines*. This will include applications that are incomplete, or lodged incorrectly.

Applications can be submitted for consideration at any time and will be assessed on a continuous basis. Continuous application rounds will facilitate timely decisions, to meet *Applicants'* respective innovation, manufacturing and investment cycles.

An application may be put through the review processes explained below on its own, or together with other applications. In this respect, *AusIndustry* has the discretion to either commence a review or defer commencement of a review until a certain number of applications have been received and can be processed together.

## **2.2 Review Stage 1: Eligibility review by AusIndustry**

On receipt, applications are checked to ensure that the *Applicant* and the application comply with the relevant eligibility criteria, including that the application is complete. As mentioned above, if these requirements of eligibility and completeness are satisfied, *AusIndustry* will notify the *Applicant* in writing that the application has been *Accepted* and will be referred for further merit assessment.

In determining whether an application for *Program funding* can be referred to the next review stage, *AusIndustry* will consider the following:

- Is the *Applicant* an *Eligible Applicant*?
- Is the application an *Eligible Application*?

Definitions of *Eligible Applicants* and *Eligible Applications* are provided in Appendix 1, and further details of the eligibility criteria are explained below in section 3.

When undertaking its review, *AusIndustry* will liaise with the *DIIC* to advise that the application has been received and to seek the *Business Adviser's* comments on the application.

Where the relevant eligibility criteria are met, the application will be referred by *AusIndustry* to the *Program Manager*. The *Program Manager* will be provided with the application and all relevant material held by *AusIndustry* including the *DIIC* commentary.

## **2.3 Review Stage 2: Merit review by the Review Panel**

In the second stage of the review of applications, the *Program Manager* submits applications to the *Review Panel* for assessment against the *Merit Criteria*.

The *Review Panel* comprises government officers with expert knowledge of the Australian defence industry and *JSF* industry capability requirements. *Review Panel* members are drawn from the *DMO* and *DIISRTE* and are appointed by the *Program Delegate*. The *Program Manager* is the chair of the *Review Panel*.

The role of the *Review Panel* is to advise the *Program Delegate* on matters regarding the eligibility and relative merit of *Applicants* under the *Program*.

The *Review Panel* may also provide the *Program Delegate* with *Merit Rankings*, including:

- a ranking of all current applications in order of merit; and/or
- an absolute assessment of a current application (or applications) against the *Merit Criteria* without any relative ranking.

Ultimately, applications must rate highly against each merit criterion to be considered for *Program funding*.

The *Review Panel* may decline to provide a ranking for an application or an assessment where it considers that the *Project* described in that application is ineligible even if previously deemed to be eligible, or the application lacks sufficient merit under one or more of the merit criteria.

In conducting its assessments, the *Review Panel* may seek additional information from the *Applicant* or advice from *DIIC* and/or *AusIndustry*.

Once the merit review is complete, the *Program Manager* will submit applications with the *Review Panel's* assessments to the *Program Delegate* for the final decision.

## **2.4 Review Stage 3: Program Delegate makes the final decision**

After receiving the assessment of an application from the *Review Panel*, the *Program Delegate* may approve or reject the application.

Where an application is approved, the *Program Delegate* has absolute discretion in determining the quantum, terms and conditions of the *Program Funding*.

When making decisions relating to the approval of *Program funding* the Program Delegate must, at a minimum, consider:

- the *Review Panel's* assessment of the application;
- *Program Funds* currently available;
- *Program Funds* already committed in the current and future years; and
- indicative targets for approvals throughout the current year.

The *Program Delegate* may make their own assessment of an application both in terms of absolute merit against the merit criteria or relative merit against other applications.

The *Program Delegate* may decline to fund an application, notwithstanding it is of high merit, on the basis of *Program Funds* available and uncommitted, and / or may decide to provide *Program funding* that represents only part of the amount requested in an application.

*AusIndustry* will endeavour to notify all *Applicants* in writing of the success or otherwise of their application usually within 30 calendar days from the date the application is accepted for assessment. *Applicants* are advised of the application *acceptance date* by letter.

The *Program Delegate's* decision is final in all matters.

## 2.5 Successful applications

If an application is approved by the *Program Delegate*, *AusIndustry* will enter into a *Funding Agreement* with the *Applicant*, on behalf of the Commonwealth. *Funding Agreements* and obligations of successful applicants (or *Customers*) are explained in section 5 and Appendix 6 below.

## 2.6 Unsuccessful applications

If the application is not successful, the *Applicant* will be notified in writing and provided the opportunity to discuss the outcome with a *Business Adviser*.

Options for submitting a new application can also be discussed with the *Business Adviser*. A new application will be accepted for review only if it contains materially new information, or is in respect to a materially different *Project*, and it otherwise meets the relevant eligibility criteria.

If unsuitable for the *Program*, where possible, *Applicants* will be referred by their *Business Adviser* to other assistance Programs that may meet their business needs.

The *Program Delegate* has the ultimate discretion in respect to decisions made under the *Program*, including whether to approve or reject an application. If you would like to appeal the assessment and/or decision, please contact the *Program Manager* in the first instance. If you are not satisfied with this procedure, you may refer your appeal to the *Program Delegate*.

Appeals and complaints should be submitted in writing to:

Via email [NACC-ISP@innovation.gov.au](mailto:NACC-ISP@innovation.gov.au)

Via post Attention NACC-ISP Program Manager/Program Delegate  
c/- AusIndustry Delivery Manager (NACC-ISP)  
AusIndustry  
GPO Box 9839  
CANBERRA ACT 2601

The *Program Delegate* has absolute discretion upon receipt of such an appeal to maintain or change their initial decision.

Please also refer to section 6.5 below for details of the general complaints handling process under the *Program*.

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### 3 Eligibility Criteria (Review Stage 1)

In this section, the criteria against which an application is assessed by *AusIndustry* during the first stage of the review of an application for *Program funding* are explained. This stage of the review includes:

- (a) determining if the *Applicant* is an *Eligible Applicant*; and
- (b) determining if the application is an *Eligible Application*.

#### 3.1 Eligible Applicant Criteria

To be an *Eligible Applicant*, an *Applicant* must:

- (a) be a certain type of entity;
- (b) have ownership, access to, or the beneficial use of, any *intellectual property* necessary to carry out the *Project*;
- (c) demonstrate an ability to fund the costs of the *Project* (other than those covered by the *Program funding* sought by the *Applicant*);
- (d) where the *Project* proposed by an *Applicant* is to be undertaken by a consortium or a trust, comply with any additional application criteria as specified in these *Customer Guidelines*;
- (e) not be one of the companies engaged on the development of the *JSF* and listed in an attachment to these *Customer Guidelines* as a '*JSF Prime*'; and
- (f) not be named by the Affirmative Action Agency as an organisation that has not complied with *the Equal Opportunity for Women in the Workplace Act 1999* (Cth).

Further details in respect to each of these criteria are provided below.

#### Type of entity

An *Eligible Applicant* must be one of the following:

- (a) For *Stream A Grants* and *Stream B Grants*:
  - (i) a *Non tax exempt company*; or
  - (ii) an *Australian University*, *Cooperative Research Centre (CRC)* or a *Publicly Funded Research Agency (PFRA)*.
- (b) For *Stream C Grants*:
  - (i) a *Non tax exempt company* which is controlled by an *Australian University*, *CRC* or *PFRA*; or
  - (ii) an *Australian University*, *CRC* or *PFRA*.

### **Access to necessary IP for the Project**

An *Applicant* must be able to demonstrate that it owns, or has access to or beneficial use of, any existing *IP* needed to carry out the *Project*. *Applicants* are not eligible for *Program funding* if the *IP* is in dispute or ownership has not been clearly established.

It is also normally expected that, if the *Project* succeeds, the *Customer* will own any *IP* resulting from the *Project*. Arrangements regarding the exploitation of *Project IP* which differ from this must be explained comprehensively in the application made by an *Applicant* or additional documents sent in at the time of application.

Where relevant, the *Applicant* should provide, with their application, documentary evidence of relevant *IP* arrangements. If it is not appropriate or necessary to access *IP* to carry out the *Project*, then such documentation will not be required, but an explanation will be required to justify this position.

### **Ability to fund the costs of the Project**

*Applicants* are required to contribute to the funding of their *Project*. Specifically, all *Applicants* are required to match *Program funding* on a 50:50 basis.

An *Applicant* will need to provide documentary evidence of its ability to fund its share of *Project* costs in the application. An accountant's written opinion would be sufficient to meet this criterion, if it is prepared and signed by a person who:

- (i) is not a director, other office holder, or employee of the applicant or related body corporate of the *Applicant*;
- (ii) has not been engaged by the *Applicant* for the purpose of preparing the application for *Program funding*;
- (iii) has no financial interest in the *Applicant*; and
- (iv) is a current member of the Institute of Chartered Accountants in Australia; or the Society of Certified Practising Accountants; or the National Institute of Accountants as a Public Practice Certified Member, and

included each of the following:

- a statement as to the *Applicant's* solvency; and
- a statement confirming that the *Applicant* is able to fund its share of the cost of the proposed *Project*.

While it is not necessary to have all matching funding at the time of application, the *Applicant* must demonstrate it will be able to fund its share of *Project* costs at the rate it will incur *Eligible Expenditure* on the project. (See Appendix 3 for further details of *Eligible Expenditure*.) It cannot use in-kind (non-financial) contributions as matching funding.

For *Australian Universities*, *CRCs* and *PRFAs*, matching funding for the *Project* cannot be provided from grant funding received from other government Programs or from

contracted member/customer contributions that were provided to the organisation for already designated work activities.

A grant, loan or investment from an entity that is partly government funded, such as an *Australian University, CRC* or a *PFRA*, is not considered *government financial assistance* if the monies are sourced from the entity's commercial activities, such as contract research and development or from licensing its *IP*.

The *Program Delegate* may reduce the amount of the *Program funding* sought by an *Applicant* after taking into account other *Government financial assistance* provided to the same *Project* and any relevant advice from *DIISRTE* and the *Review Panel*.

The *Applicant* must include in its application details of any *Government financial assistance* the *Project* receives, including the amount of the funding, the source of funding and the terms and conditions under which it was provided.

The *Program Delegate* has the final decision in determining what is *Government financial assistance* and may issue additional guidance on a case-by-case basis as required.

#### Additional requirements for Cooperative Research Centres (CRCs):

Any *Program funding* provided to a *CRC* would need to be provided through a separate contract and accounted for separately (i.e. not passed through the *CRC's* single bank account set up to receive *CRC Program* grant funding and contributions from *CRC* customers).

The *Applicant's* share of the *Project* costs under the *Program* can not be sourced from the *CRC Program* grant funding or from contracted customer contributions that were to be provided to the *CRC* for the activities of the *CRC* which are the subject of the Commonwealth Agreement between the *CRC* and *DIISRTE*. This means that, regardless of the source of the funding (including whether private or government), funds provided to the *CRC* for the work for which the *CRC* was awarded its *CRC Program* funding grants cannot be used by the *CRC* as 'matching' funding for the purposes of the *Program*.

#### **Additional criteria where the Applicant is part of a consortium**

The *Program* encourages cooperation between businesses and/or researchers where relevant and will consider applications for funding of collaborative projects.

Collaboration is a formal link between entities where key personnel from different institutions or companies are substantially involved in developing and undertaking the *Project*. This relationship goes beyond the level of involvement under a traditional fee-for-service association — that is, it goes beyond normal arrangements that would exist with contractors.

An application for *Program funding* may be lodged by a lead entity of a consortium or group to undertake a collaborative *Project*, provided that the consortium has agreed that the entity should act on its behalf in lodging an application, and the lead entity is willing and able to commit to the legal and financial obligations arising from the *Funding Agreement*. The lead entity must itself be an *Eligible Applicant* and must be able to

make-up any shortfall in contributions by consortium members. The lead entity is also responsible for ensuring all consortium members understand *Program* requirements prior to the application being lodged.

To meet the criteria to be an *Eligible Applicant*, an *Applicant* representing a consortium must:

- (a) be able to demonstrate that the consortium has beneficial use (relevant licences or ownership) of all *IP* necessary to conduct the *Project* and achieve the planned outcomes of the *Project* as described in the application; and
- (b) confirm that the *Applicant* and all consortium members have not been named as organisations that have not complied with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) at any time after the lodgement of the application; and
- (c) meet the other criteria to be an *Eligible Applicant*; and
- (d) provide with the application a signed letter of intent from each member of the consortium described in the application.

The letters of intent should at a minimum:

- affirm that member's support for, and participation in, the *Project* consistent with the details provided in the application;
- contain a complete and accurate description of that member's role, responsibilities and contribution to the *Project*. This contribution may be financial and/or involve the provision of key assets (eg *intellectual property*) or expertise for the *Project*; and
- be on the letterhead of the relevant consortium member and signed by a person with the requisite authority to commit to the resources described. The *DIIC* or *AusIndustry* may ask for additional information to verify the person's authority or a particular member's commitment.

### **Applicant as a trust**

If the *Applicant* is a trustee, full details of the trust and trust structure must be specifically disclosed to the Commonwealth in the *Applicant's* application.

If the *Applicant* is a trustee additional requirements may apply, as specified in the *Funding Agreement*.

### **Applicant must not be a JSF Prime**

The *Applicant* will not be an *Eligible Applicant* if it is a *JSF Prime*. A list of *JSF Primes* is provided at Appendix 5. This list may be updated from time to time.

### **Equal opportunity requirement**

An *Applicant* will not be an *Eligible Applicant* if it does not comply with its obligations under the *Equal Opportunity for Women in the Workplace Act 1999* (Cth). Companies on

the list of non-compliant organisations (available at [www.eowa.gov.au](http://www.eowa.gov.au)) at any time after lodgement of an application are not eligible to receive *Program funding*.

### 3.2 Eligible Application Criteria

An application must satisfy the following to be an *Eligible Application*:

- the Applicant must be an *Eligible Applicant* (see 3.1 above);
- the *Project* must involve *Eligible Activities*;
- the application must be complete and contain sufficient information to undertake an assessment of the merits of the application; and
- the application must be in the form required (see 2.1 above).

#### Eligible Activities

*Eligible Activities* are defined as follows:

- For *Stream A Grants*, *Eligible Activities* are those necessary to develop a new or improved *JSF* technology, product, process or service that is required by *entities within the JSF supply chain*, and which can demonstrate more than one *JSF* application.
- For *Stream B Grants*, *Eligible Activities* are those necessary to develop a new or improved technology, product, process or service to enhance a company's competitiveness in winning work from *entities within the JSF supply chain*; or to engage in a study effort that relates to a capability required by *entities within the JSF supply chain* or the *JSF Program Office*.
- For *Stream C Grants*, *Eligible Activities* are those necessary to undertake a research effort that leads to *JSF* industry capability enhancements or manufacturing improvements required by *entities within the JSF supply chain* or the *JSF Program Office*.
- In respect of all grants (regardless of the stream applied for), *Eligible Activities* must be directly related to maximising Australian industry involvement in the *JSF* production, sustainment and follow on development.
- Where the *Applicant* is a *CRC*, its activities which are the subject of the Commonwealth Agreement between the *CRC* and *DIISRTE*, (that is, the work for which the *CRC* was awarded its *CRC* Program funding grant) will not be considered *Eligible Activities*. *Program funding* will not be provided for any such activities.

The exact nature of activities which are *Eligible Activities* will vary from *Project* to *Project*. Examples of the types of activities that will be considered *Eligible Activities*, provided in the context of the assessment of *Eligible Expenditure*, include:

- salary costs for employees;
- plant and equipment, including its installation and commissioning;

- expenditure on contractors;
- licence costs for *IP*; and
- prototyping and first article qualification costs that are not reimbursable from a *JSF Prime* or *OEM*,

where the activity is a necessary part of the *Project*. However, what will be included as an *Eligible Activity* for a specific *Project* will ultimately be determined on the basis of progress reports, or in any prior approval of *Eligible Expenditure* provided. Please refer to Appendix 3 below for further details of *Eligible Expenditure*.

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## 4 Merit Criteria (Review Stage 2)

In this section, the criteria against which an application is assessed by the *Review Panel* during the second stage of the review of an application for *Program funding* are explained. These *Merit Criteria* are:

- (a) Need for funding;
- (b) Commercial plan;
- (c) Management capability;
- (d) Market opportunity;
- (e) National benefits.

Further details of each of these criteria, and indicators of merit relevant to each are provided below in section 4.2.

### 4.1 Use of Merit Criteria

The *Review Panel* assesses and may prioritise applications against the *Merit Criteria* by providing a *Merit Ranking* to the *Program Delegate* to assist with the final decision as to whether *Program funding* should be granted.

The *Program* is a highly competitive, merit based program, and only applications which demonstrate a high level of merit against the *Merit Criteria* will be successful.

Accordingly, *Applicants* should address and provide evidence for each of the *Merit Criteria* in their application. When addressing the *Merit Criteria*, an *applicant* should consider and demonstrate their claims in both quantitative and qualitative terms.

*Applicants* should be aware that the *Review Panel's* interpretation of the *Merit Criteria* will be appropriate to the funding stream. Specifically, applications for *Stream C Grants* will need to address the *Merit Criteria* as it applies to research efforts.

## 4.2 Merit Criteria

### (a) Need for Funding

In addressing this criterion, the *Applicant* must:

- (i) demonstrate the *Applicant's* financial and non-financial commitments to date; and
- (ii) demonstrate that Commonwealth assistance is required to achieve the desired outcome:
  - (A) The *applicant* should identify how Commonwealth funding will significantly enhance the *Project*, as opposed to financing from alternative sources. This may include factors such as decreasing the risk of the *Project* through stable funding, or early commencement of the *Project* through reducing the time necessary to arrange funding.

### (b) Commercial Plan

The *Applicant* must demonstrate how it plans to enhance its ability to compete for the business opportunity/opportunities identified within the *JSF* supply chain.

The *Applicant* may indicate merit in this respect by demonstrating:

- (i) an effective process to manage and deliver the proposed outcome, including ensuring that key personnel have appropriate expertise with a solid industry track record; and
- (ii) a sound execution plan setting out a clear route to achieve the Project outcomes including matters such as the following:
  - (A) a clear set of objectives;
  - (B) a clearly defined path to market detailing actions, timeframes and financial expenditure necessary to achieve commercial exploitation which benefits Australia;
  - (C) an understanding of the key structural or market challenges to be resolved including an understanding of any trade barriers and access to manufacturing partners; and
  - (D) a sound *Intellectual Property* strategy (where applicable).

### (c) Management Capability

The *Applicant* must demonstrate the capacity and capability to undertake the *Project*. The *Applicant* may indicate merit in this respect by demonstrating:

- (i) key management personnel have appropriate skills in:
  - (A) project management;

- (B) business management, including human resources and financial management; and
- (C) commercialisation (where applicable),
- (ii) it has core business interests directly relevant to the *Project*;
- (iii) it has a company business plan which includes and supports the proposed *Project*;
- (iv) company stability and/or growth over the two financial years prior to lodging the application if the *Applicant* is an established company;
- (v) technical capacity to undertake the *Project*, including:
  - (A) adequate infrastructure, facilities and equipment available to meet the short and long-term requirements of the *Project*;
  - (B) appropriately skilled technical staff, and sub-contractors; and
  - (C) a well-articulated *Project* plan, including activities, methodologies and milestones linked to a feasible timeframe and budget.

(d) **Market Opportunity**

The *Applicant* may indicate merit in this respect by:

- (i) demonstrating a realistic estimate of the financial revenue that will result from the *Project* outcome as follows:
  - (A) relating to the specific *JSF* requirement associated with the *Project*; and
  - (B) relating to exploitation of other requirements and applications;
- (ii) providing evidence that the *project* will lead to other market opportunities (*JSF* and/or non-*JSF*); and
- (iii) demonstrating a realistic understanding of the competitive advantage(s) of the *Project's* outcomes compared to existing or competing products, processes or services.

(e) **National Benefits**

The *Applicant* must demonstrate that:

- (i) the *Project* will contribute to the enhancement of the Australian *JSF* industry outcome;
- (ii) the *Project* enhances Australian defence industry skills, capabilities and competitiveness;
- (iii) outcomes can address other Australian business opportunities in global defence industry supply chains.

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## 5 Entering a Funding Agreement

### 5.1 Process of entering a Funding Agreement

Successful *Applicants* will receive a written offer of *Program funding*. Offers will be sent to *Applicants* by *AusIndustry* on behalf of the *Program Delegate*. If an *Applicant* accepts this offer, it is required to sign a *Funding Agreement* before *Program funding* will be paid.

*Applicants* should note that in addition to entering into a *Funding Agreement*, the payment of *Program funding* will be subject to the fulfilment of all relevant obligations as set out in the application form and *Funding Agreement* itself. For instance, *Program funding* will not be paid until an *Applicant* or *Customer* is registered for the *GST*.

Further information about *Funding Agreements*, including a summary of important terms and conditions, is provided below in Appendix 6. A template *Funding Agreement* is available at the [NACC-ISP page on the Enterprise Connect website](#).

An offer of *Program funding* may be subject to special conditions, and may be withdrawn in certain circumstances. The *Program Delegate's* decision is final with regard to the offer of *Program funding*, including the size and terms and conditions for which *Program funding* is offered.

The *Applicant* will have **30 calendar days** from the date of the offer (or any longer period allowed by the *Program Delegate*) to execute a *Funding Agreement* with the Commonwealth. The offer of *Program funding* may be withdrawn if a *Funding Agreement* is not executed within this time.

The *Funding Agreement* is a legal contract between the *Customer* (which the *Applicant* will become upon signing the *Funding Agreement*) and the Commonwealth. In the *Funding Agreement*, the Commonwealth is represented by *AusIndustry* which enters the *Funding Agreement* on behalf of the Commonwealth.

The *Funding Agreement* sets out the terms and conditions of *Program funding*, the obligations of both parties under the *Program* and the *Project* milestones. The schedules to the *Funding Agreement* will reflect other information included in the application. A sample copy of the *Funding Agreement* is available at the [NACC-ISP page on the Enterprise Connect website](#).

The *Funding Agreement* is to be finalised through consultations involving the *Applicant*, the *DIIC* and *AusIndustry*. During finalisation of the *Funding Agreement*, a 'cost check' of budgeted *Project Eligible Expenditure* may be conducted. During this 'cost check', an examination of the *Customer's* documentary evidence of the *Project's* projected *Eligible Expenditure* items may be undertaken - for example, payment summaries, contracts, quotes and so on.

In confirming certain information contained in the application, additional detail in relation to confidential information, and the *customer's* willingness to take part in *Program* marketing events and publications may also be sought.

An executed *Funding Agreement* provides *Program funding* over the life of a *Project*. Until a *Funding Agreement* is executed, there is no guarantee that *Program funding* will be paid and an *Applicant* offered *Program funding* bears the risk of any expenditure it incurs before then.

The *Funding Agreement* will contain certain obligations about undertaking the *Project* or achieving its outcomes in accordance with the *Applicant's* application.

It is important for *Applicants* to closely consider the details of the *Project* when finalising the *Funding Agreement*, and in particular, to understand the key compliance and reporting obligations and apportioning project costs across the financial years of the *Project*. Once the *Funding Agreement* is signed, any changes to *Project* expenditure including movement of funds across financial years, will require prior approval by the Commonwealth, which means unspent funds in any year may be lost from the *Project*.

If a *Customer* does intend to change its *Project* strategy it must inform the Commonwealth in writing and seek a variation to the *Funding Agreement*. Failing to do so may place the *Customer* in breach of the *Funding Agreement*. Section 3 of Appendix 6 below sets out further information about varying a *Funding Agreement*.

Queries about the *Funding Agreement* can be raised with *DIIC* and the *Customer's Business Advisor*, as they will continue to assist *Customers* in the management of their *Funding Agreement* throughout the life of the *Program*.

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## **6 Further Information**

### **6.1 Compliance visits**

Compliance visits by a person authorised by the *Program Delegate* may take place periodically throughout the *Project* period, and for up to 5 years after *Project* completion. The *Program Delegate* may authorise officers from the *DIIC* or *AusIndustry* to undertake such visits. The person authorised by the *Program Delegate* may inspect any *Customer* records required to be kept under the *Funding Agreement*, and may examine *Project* progress, for the purposes of reviewing compliance with the *Funding Agreement*. In every instance, *Customers* will be provided with reasonable notice of any intended compliance visit.

### **6.2 Taxation obligations**

Payments of *Program funding* attract the *GST*. Such payments are increased to compensate for this tax. *Eligible Expenditure* is calculated net of *GST*, and *GST* is then added to the payment of *Program funding*.

For *Customers*, this means they will receive *Program funding* as an amount plus *GST*. However, when calculating *Eligible Expenditure*, they cannot include any *GST* paid.

While *Program funding* is typically assessable income, its treatment will depend on the recipient's particular circumstances. It is therefore recommended that each *Customer* obtain independent professional advice as to the income tax implications in their particular circumstance.

*Program funding* received will affect the ability of a *Customer* to claim expenditure on R&D under the R&D Tax Concession. This is because section 73C of the *Income Tax Assessment Act 1936* operates to claw back or offset the benefits of the R&D Tax Concession if the company has received grants for the same activities.

## 6.3 Confidentiality

### Confidentiality of applications

The use and disclosure of information provided by *Applicants* for *Program funding* are regulated by the relevant provisions and penalties of the *Public Service Act 1999*, the *Public Service Regulations*, the *Privacy Act 1988*, the *Crimes Act 1914*, the *Criminal Code Act 1995* and general law.

As part of the assessment of an application, officers delivering the *Program* may need to consult with, and provide material from the application to, other government agencies or bodies, other organisations and/or relevant individuals, in order to substantiate any claims or statements made in the application form, or to otherwise assist in the assessment of the application. If this occurs, the officers involved will endeavour to ensure that the parties who are consulted observe appropriate confidentiality provisions.

Detailed confidential information contained in applications may be disclosed for audit purposes to contractors engaged under the *Program* and to other Commonwealth agencies for audit, reporting and law enforcement purposes. Further, the departments implementing the *Program* may release confidential information if it obtains the *Applicant's* consent or is required or permitted by law to do so. This could happen, for example, if the departments implementing the *Program* are required to respond to a resolution of the Parliament, or an order of a court.

*Applicants* may wish to claim exemption under the *Freedom of Information Act 1982* (Cth) to seek to avoid disclosures being made to third parties under that Act. However, a claim of exemption does not guarantee that information submitted is in fact exempt from disclosure under the *Freedom of Information Act 1982* (Cth).

### Confidentiality once application approved

The *Program* may use information on *Customers* who have received *Program funding* as part of its promotional activities. This may involve press advertising, promotional material on the *DMO* and/or *DIISRTE* websites and case studies. *Customers* will be consulted before their *Projects* are used for any detailed case study purposes.

Under the *Funding Agreement*, *Customers* are required to acknowledge any Commonwealth contribution in publicity material.

Following approval of an application for *Program funding*, some details of successful applications (i.e. name of the recipient, amount of funding, explanation and outcomes of the project) may be disclosed by the *Program* for governmental purposes such as:

- promoting the *Program*;
- reporting on its operation; and

- policy development and outcomes; and
- answering questions from the Australian Parliament and its committees.

The Commonwealth understands that in meeting reporting obligations under the *Funding Agreement* the *Customer* may, from time to time, provide confidential information. Protecting confidential information is important to *DMO* and *DIISRTE*. For this purpose, it is recommended that the *Customer* clearly identifies any confidential information contained in reports. *DMO* and *DIISRTE* must protect confidential information and may only disclose it in the limited circumstances described in the *Funding Agreement*. The confidentiality of information may also be protected by Commonwealth legislation, as well as common law, subject to the changes mentioned above.

#### **6.4 Conflicts of interest**

Conflicts of interest may arise for the Commonwealth officers implementing the *Program*. Such conflicts may include:

- (a) an officer having a financial interest in an *Applicant* or *Customer*;
- (b) an officer being closely related to an employee of an *Applicant* or *Customer*;
- (c) an officer being closely related to an employee of or having a financial interest in a competitor of an *Applicant* or *Customer*.

The *DMO*, the *Review Panel*, the *DIIC* and *AusIndustry* are required to follow formal procedures for handling matters involving actual or potential conflicts of interest. The *DIISRTE* and the *DMO* also have formal policies and procedures in place regarding actual or potential conflicts of interest.

The *Public Service Act 1999* (Cth) contains a Code of Conduct which specifies standards which Australian Public Service (APS) employees, including those implementing the *Program* are required to uphold. There is also a more general obligation under the *Public Service Regulations 1999* (Cth) on employees not to disclose any information about public business or anything of which the employee has official knowledge and under the *Crimes Act 1914* (Cth), it is an offence for an employee to publish or communicate such information.

The *DMO* and *DIISRTE* also have obligations under the *Privacy Act 1988* (Commonwealth). Further information is available at <http://www.privacy.gov.au>.

#### **6.5 Feedback and complaints handling procedure**

*Applicant* and *Customer* feedback will be greatly appreciated. At some future time you may be invited to participate in a *Customer* satisfaction or stakeholder satisfaction survey on policy development and service delivery.

To provide feedback or a complaint regarding the *Program*, *Applicants* and *Customers* can contact their *Business Adviser*.

Complaints can also be directed to *AusIndustry*:

AusIndustry Delivery Manager (NACC-ISP)  
AusIndustry  
Industry House, Level 7  
10 Binara Street                      GPO BOX 9839                      Ph: (02) 6276 1127  
CANBERRA ACT 2601      CANBERRA ACT 2601      Fax: (02) 6276 1947  
Email: [NACC-ISP@innovation.gov.au](mailto:NACC-ISP@innovation.gov.au)

Complaints specific to the assessment of applications will be forwarded by the *AusIndustry Delivery Manager* to the *Program Manager*.

Alternatively, complaints may be made to the Commonwealth Ombudsman. There is no fee for making a complaint and the Ombudsman will conduct an independent investigation of any concerns. (The Ombudsman usually prefers complainants to first work through relevant internal processes before complaining about a decision.)

The Ombudsman has offices in all states and territories. The Ombudsman can be contacted by telephoning **1300 362 072** or by writing to the relevant contact address specified on the [Ombudsman's website](#).

## Appendix 1: Definitions

Term	Definition
Accept / Acceptance	‘Accept’ or ‘Acceptance’ means to admit for assessment under the <i>Program</i> in accordance with the <i>Program Guidelines</i> and the <i>Customer Guidelines</i> .
Acceptance Date	The date an application is <i>Accepted</i> , as advised in a letter from <i>AusIndustry</i> to an <i>Applicant</i> .
Annual Capped Grant Amount	<p>An <i>annual capped grant amount</i> is the maximum amount of <i>NACC-ISP</i> funding payable to the <i>customer</i> for each financial year. It is set out in Schedule 1 of the <i>funding agreement</i>.</p> <p>Caps are also applied to total project budget amounts allowable under certain <i>Heads of Expenditure</i> and can only be exceeded with the prior approval of the <i>Program Delegate</i>:</p> <ul style="list-style-type: none"> <li>- <i>Intellectual Property</i> protection is limited to 10% of total expenditure;</li> <li>- Acquisition of new technology is limited to 10% of total expenditure;</li> <li>- Overseas expenditure is limited to 25% of total expenditure;</li> <li>- Acquisition of plant and equipment, and its adaptation, is limited to 50% of total expenditure.</li> </ul>
Applicant	An <i>applicant</i> is the person or persons wanting to receive a grant or other assistance, either as a <i>non tax exempt company</i> , an <i>Australian University</i> , <i>CRC</i> or <i>PFRA</i> . The definition of ‘ <i>applicant</i> ’ does not include the authorised employee, officer or agent who may be completing the application on the <i>applicant’s</i> behalf.
AusIndustry	The division of the Department of Industry, Innovation, Science, Research and Tertiary Education known as <i>AusIndustry</i> .
AusIndustry Delivery Manager	A <i>DIISRTE</i> employee authorised by the <i>Program Delegate</i> as the <i>AusIndustry Delivery Manager</i>
Australian University	An entity that is listed as a Table A provider or a Table B provider under the <i>Higher Education Support Act 2003 (Cth)</i> .
Bodies Corporate/ Related Body Corporate	Has the same meaning as in section 50 of the <i>Corporations Act 2001 (Cth)</i> .
Business Adviser	An adviser engaged by the <i>DIIC</i> to provide advice and guidance to its <i>Customers</i> .

<b>Term</b>	<b>Definition</b>
Cooperative Research Centre (CRC)	An incorporated or unincorporated organisation, formed through collaborative partnerships between publicly funded researchers and end users. CRCs must comprise at least one Australian end-user (either from the private, public or community sector) and one Australian higher education institution (or research institute affiliated with a university).
Current review period	The six month period that has ended and for which the <i>Customer</i> is reporting under the <i>Funding Agreement</i> .  It is the period immediately prior to the six month period in which the <i>Customer</i> lodges the progress report (or <i>Project</i> completion report as applicable).
Customer	An <i>Eligible Applicant</i> whose <i>Eligible Application</i> has been approved and who has entered into a <i>Funding Agreement</i> .
Customer Guidelines	Means these guidelines, as formulated by the <i>Program Delegate</i> under the relevant sections of the <i>Program Guidelines</i> , and in accordance with the Commonwealth Grant Guidelines issued by the Minister for Finance and Deregulation under Regulation 7A of the <i>Financial Management and Accountability Act 1997 (Cth)</i> .
DIIC	The Enterprise Connect Defence Industry Innovation Centre.
DIISRTE	The Department of Industry, Innovation, Science, Research and Tertiary Education and more specifically the delivery partners <i>AusIndustry</i> and <i>DIIC</i> .
DMO	The Defence Materiel Organisation within the Defence portfolio.
Eligible Activity	An activity that satisfies the requirements of section 44 and 45 of the <i>Program Guidelines</i> and 3.2 of these <i>Customer Guidelines</i> .
Eligible Applicant	An <i>Applicant</i> that satisfies the requirements of section 38 or section 39, in addition to section 40 of the <i>Program Guidelines</i> and 3.1 of these <i>Customer Guidelines</i> .
Eligible Application	An application which satisfies the criteria specified in section 41, 42 and 43 of the <i>Program Guidelines</i> and 3.2 of these <i>Customer Guidelines</i> .
Eligible Expenditure	An expenditure which satisfies the criteria specified in Appendix 3 of these <i>Customer Guidelines</i> .
Entities within the JSF supply chain	‘ <i>Entities within the JSF supply chain</i> ’ means: <ul style="list-style-type: none"> <li>one or more of the companies engaged on the development of the F-35 Lightning II Joint Strike Fighter and listed in Appendix 5 of</li> </ul>

Term	Definition
	<p>the <i>Customer Guidelines</i> as a ‘<i>JSF Prime</i>’; or</p> <ul style="list-style-type: none"> <li>• companies supplying equipment or systems to one or more of the entities defined as ‘<i>JSF Primes</i>’ and listed in Appendix 5 of the <i>Customer Guidelines</i> as an ‘<i>Original Equipment Manufacturer</i>’; or</li> <li>• companies supplying a capability that is required by one or more of the entities defined as a ‘<i>JSF Prime</i>’ or an ‘<i>Original Equipment Manufacturer</i>’, directly or indirectly through a supply chain.</li> </ul>
Funding Agreement	Means an agreement in respect to the payment of <i>Program funding</i> entered into between the Commonwealth of Australia (represented by an officer of the Commonwealth duly authorised by the <i>Program Delegate</i> ) and the <i>Customer</i> .
Goods and Services Tax (GST)	Has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Government financial assistance	Any grant, loan, investment or other financial assistance received from another Commonwealth, State or Territory government department, agency or other governmental body.
Heads of Expenditure	<p>The heads of expenditure set out in section 2 of Appendix 3, being:</p> <ul style="list-style-type: none"> <li>• Labour expenditure</li> <li>• Contract expenditure</li> <li>• Plant expenditure</li> <li>• Prototype expenditure</li> <li>• IP protection expenditure</li> <li>• Collaborative Project Expenditure</li> <li>• Acquisition and adaptation of new technology</li> <li>• Other expenditure.</li> </ul>
Includes / Including	Means includes or including without limitation.
Intellectual Property (IP)	Statutory and other proprietary rights and includes patents, trade marks, designs, confidential information/trade secrets, copyright, circuit layout rights, plant breeder’s rights and so on.
JSF	Means the F-35 Lightning II Joint Strike Fighter aircraft.
JSF Prime	One or more of the companies engaged on the development of the F-35 Lightning II Joint Strike Fighter as listed in Appendix 5 of these <i>Customer Guidelines</i> .

<b>Term</b>	<b>Definition</b>
JSF Program Office	The United States Department of Defense Joint Strike Fighter International Program Office.
Minister	The Minister for Defence.
Merit Criteria	The criteria listed in section 46 of the <i>Program Guidelines</i> and detailed in 4.2 of these <i>Customer Guidelines</i> .
Merit Ranking	The ranking of <i>Eligible Applications</i> provided by the <i>Review Panel</i> after assessing the merits of <i>Eligible Applications</i> .
Next review period	The six month period in which the <i>Customer</i> submits a progress report (or <i>Project</i> completion report as applicable) under the <i>Funding Agreement</i> and any payment claim.
Non tax exempt company	A company, except a company to which Division 50 of the <i>Income Tax Assessment Act 1997</i> applies, that is incorporated in Australia.
Original Equipment Manufacturer (OEM)	A company supplying equipment or systems to one of the <i>JSF Primes</i> as listed in Appendix 5 of these <i>Customer Guidelines</i> .
Program	The New Air Combat Capability – Industry Support Program
Program Delegate	An employee of the <i>DMO</i> who has been empowered by the <i>Minister</i> , or is otherwise duly authorised, to undertake the responsibilities specified in the <i>Program Guidelines</i> in respect of the <i>Program</i> .
Program End Date	30 June 2014, or such other date as amended by the Program Delegate and published on the <i>NACC-ISP</i> page on the <i>Enterprise Connect</i> website.
Program funding (or “grant payment”)	Financial assistance sought by an <i>Applicant</i> or provided to a <i>Customer</i> under the <i>Program</i> .
Program Funds	The total funding made available by the Commonwealth for the <i>Program</i> in any given financial year, being the funding specified in the Portfolio Budget Statement (as varied by any Portfolio Additional Estimates Statement or by the <i>Minister</i> ) for that year.
Program Guidelines	The guidelines given by the <i>Minister</i> to provide a framework for the operation and administration of the <i>Program</i> , as in force and amended from time to time.
Program Manager	A <i>DMO</i> employee authorised by the <i>Program Delegate</i> as the <i>Program Manager</i> .
Project	The project to which an application relates.

Term	Definition
Publicly Funded Research Agency (PFRA)	<p>An organisation to which the following criteria apply:</p> <ul style="list-style-type: none"> <li>• it is at least 50 per cent owned or controlled by the Commonwealth, or an Australian state or territory government;</li> <li>• it is primarily carrying out research and development activities; and</li> <li>• it is: <ul style="list-style-type: none"> <li>- providing services, or making facilities available, in relation to science or technology;</li> <li>- training, or assisting in the training of, persons in the field of scientific or technological research; or</li> <li>- collecting, interpreting or publishing information relating to science or technology.</li> </ul> </li> </ul>
Review Panel	A panel of experts as convened by the <i>Program Delegate</i> and described in section 24 and 25 of the <i>Program Guidelines</i> .
Stream A Grant	<i>Program funding</i> for a technical development project as specified in sections 6(a), 38, 44, 59 and 60 of the <i>Program Guidelines</i> and 1.2(a) of these <i>Customer Guidelines</i> .
Stream B Grant	<i>Program funding</i> for an enhancing competitiveness project, including a study, as specified in sections 6(b), 38, 44, 61 and 62 of the <i>Program Guidelines</i> and 1.2(b) of these <i>Customer Guidelines</i> .
Stream C Grant	<i>Program funding</i> for a research effort as specified in sections 6(c), 39, 44, 63 and 64 of the <i>Program Guidelines</i> and 1.2(c) of these <i>Customer Guidelines</i> .

## Appendix 2: Terms on which applications are sought under the Program

The following terms apply to applications for *Program funding*:

- (a) *DIISRTE* and the *DMO* are not obliged to accept applications which are not made in accordance with section 2 of these *Customer Guidelines*. This will include applications that are incomplete, or lodged incorrectly. However, *DIISRTE* and the *DMO* may, in their absolute discretion, accept an application in spite of any defects.
- (b) All proposals become the property of *DIISRTE* and the *DMO* once lodged. *DIISRTE* and the *DMO* may copy, amend, extract or otherwise deal with all or any part of an application for the purpose of conducting the review process.
- (c) All expenses and costs incurred by an organisation in connection with this *Program*, including (without limitation) preparing and submitting an application for *Program funding*, providing *DIISRTE* or the *DMO* with further information, attending interviews and participating in any subsequent negotiations, are the sole responsibility of the organisation.
- (d) Nothing in these *Customer Guidelines* should be construed to give rise to any contractual obligations or rights, express or implied, by the existence of the *Program* or the submission of an application in respect to it. No contract will be created until a *Funding Agreement* is executed between *DIISRTE* and a successful *Applicant*.
- (e) In the event that a court finds there to be a contract between *DIISRTE* or the *DMO* and an *Applicant* regarding the conduct of this selection process contrary to section (d) above, the *Applicant* acknowledges that *DIISRTE* and the *DMO*'s liability for any breach of the terms of such contract is limited to the *Applicant*'s costs of participation in the selection process, and does not include liability for any lost profit, lost opportunity or other losses of the *Applicant*.

Notwithstanding any other provision of these *Customer Guidelines*, *DIISRTE* and the *DMO* reserve the right, at any time to:

- (a) allow, or not allow, a successful *Applicant* to enter into a *Funding Agreement* in the name of a different legal entity from that which it used in its application;
- (b) negotiate or not negotiate with any one or more *Applicants* or *Customers*, and discontinue negotiations at any time; and
- (c) suspend or terminate this *Program* or any part of it.

## Appendix 3: Eligible Expenditure Guidelines

### Introduction

These guidelines set out the principles governing what is *Eligible Expenditure*.

*Applicants* to the *Program* should use these guidelines when preparing their application. *Customers* must use these guidelines when conducting their project and completing project progress reports. The *Program Delegate* (and his or her authorised officers) will use these guidelines to determine eligibility of budgeted project costs and the *Project funding* amount to be approved, and to determine a *Customer's* entitlement to *Program funding* payments during the period of a *Funding Agreement*.

A *Project* may include ineligible expenditures but the *Customer* will be required to fund the full costs of ineligible expenditure activities.

The *Program Delegate* has the final decision in determining *Eligible Expenditure* and may issue additional guidance on *Eligible Expenditure* on a case-by-case basis as required.

### 1. Eligible Expenditure governing principles

The objectives of the *Program* convey in a broad sense, the spirit and intention behind the *Eligible Expenditure* guidelines. They should not be solely relied on to determine *Eligible Expenditure*, but referred to so as to provide direction and support on decisions regarding the eligibility of expenditure detailed in the guidelines.

#### 1.1 Eligible Expenditure is restricted to expenditure incurred directly on the *Project*

- Only expenditure incurred on *Eligible Activities* within the agreed *Project* duration (as highlighted in the *Funding Agreement*) is *Eligible Expenditure*, unless otherwise noted in the *Eligible Expenditure* guidelines.
- *Eligible Expenditure* must be incurred from the 'Project Start Date' up until the project end date, with the exception of final audit costs which can be incurred within three months of the 'Project End Date'. Both the Project Start Date and Project End Date will be specified in the *Funding Agreement*, though the Project Start Date cannot be before the *Acceptance Date*.
- The *Customer* must pay expenditure within the earlier of three months after the financial year in which it is incurred or within three months after the *Project* completion date (including final audit costs), for the expenditure to be deemed eligible.
- *Eligible Expenditure* can include costs, direct or otherwise, of obtaining assets for their use on *Project* activities but will exclude any opportunity costs from using assets on the agreed *Project* instead of use for other purposes.
- All members of a consortium who incur costs on *Eligible Activities* within the agreed *Project* duration may invoice the *Customer* for these costs. On paying these invoices, the *Customer* may claim these expenses against the grant.

#### 1.2 Program funding is provided strictly to support the *Project* and its core activities; it is not provided for the benefit or profit of related bodies corporate of the *Customer*

- Related body corporate has the same meaning as in section 50 of the *Corporations Act 2001* (Cth).

- Where *Project* activities are conducted through contracting related bodies corporate of the *Customer*, these costs (known as ‘intra-group payments’) may qualify as *Eligible Expenditure* only if a reliable, measurable cost is incurred by the related body, and a verifiable process is used to transfer that cost to the *Customer* with no profit margin attached, ‘at cost’.
- The *Customer* should only claim that proportion of costs which directly relates to activities performed on the funded *Project*. Where there is a mutual benefit arising from *Project* activities, either to another company or for another project, the *Customer* should reasonably apportion such costs so as to claim only for those activities which directly apply to the *Project*.

### **1.3 The customer must retain sufficient documentation to support all expenditure claims made on the Project**

- Failure to retain sufficient documentation to support all expenditure claims made on the *Project* may result in a claim being disallowed, or in certain circumstances, the repayment of *Program funding* resulting from a shortfall in *Project* expenditure.
- The *Customer* must maintain an adequate audit trail that clearly demonstrates to the satisfaction of the *Program Delegate*, how claims were determined including a reconciliation of expenditure claims to underlying documentation.
- Claims for salary, contract and asset depreciation must be verified by *Project* timesheets, job cards or activity diaries that record actual use of those employees, contractors and assets against specific *Project* milestones as the activities take place.
- While such records do not need to be submitted with regular progress reports, the *Program* may require such records to verify any or all *Eligible Expenditure* claims. Failure to provide such records when required may see the *Program Delegate* disallow the expenditure claims.
- Consortium members who invoice the *Customer* for *Project* costs are also required to retain sufficient documentation to substantiate the work performed.
- A *Customer’s* *Project* budget calculator should detail *Project* costs incurred through consortium members. It is the responsibility of the *Customer* to keep the *Project* budget calculator up to date and to fulfil all other reporting requirements, including supplying supporting documentation for claims if required.

### **1.4 ‘In-kind’ contributions/ Non-cash considerations are not Eligible Expenditure**

For *Program* purposes, ‘in-kind’ contributions are not *Eligible Expenditure*. ‘In-kind’ contributions, or non-cash considerations, are contributions to a project that have the following common characteristics:

- no impact on entity cash flow, and
- no record in the entity’s statement of financial performance.

Examples include, but are not limited to:

- the use of resources—whether internally or externally sourced—for no cost to the *Project*, and
- issuing shares in payment for services rendered.

## **2. Heads of Expenditure – Eligible Expenditure types**

These guidelines set out in detail the specific *Eligible Expenditure* types (section 2.1) and the *Eligible Expenditure* treatment of certain activities in agreed *Projects* (section 2.2).

For expenditure to be eligible it must be:

- directly related to an *eligible activity* undertaken in the period from the ‘Project Start Date’ to the project end date.; and
- incurred and paid for by the *applicant*.

## 2.1 Eligible Expenditure types

This section sets out the *Heads of Expenditure* under which *Applicants* and *Customers* must record *Project Eligible Expenditure* in applications and *Project* reports.

The *Heads of Expenditure* are:

- Labour expenditure
- Contract expenditure
- Plant expenditure
- Prototype expenditure
- *IP* protection expenditure
- Collaborative Project Expenditure
- Acquisition and adaptation of new technology
- Other expenditure

These *heads of expenditure* are explained in more detail below.

### 2.1.1 Labour expenditure

Eligible labour expenditure covers the cost to the *Customer* of its employees directly employed on the core elements of the *Project*. An employee is a person who is paid a regular salary or wage out of which regular tax instalment deductions are made.

Labour expenditure for leadership or administrative staff (such as CEOs, CFOs, accountants and lawyers) is not *Eligible Expenditure* unless the *Customer* substantiates to the *Program Delegate*'s satisfaction that these costs directly relate to performance of core elements of the *Project*.

Please note that labour costs should be included in the appropriate category of expenditure when determining total *Eligible Expenditure*. For example:

- the costs to the *Customer* of its employees performing an administrative function are included in the employee administrative overhead (see section 2.1.1.4).
- the costs to the *Customer* of its factory employees working solely on the installation or construction of plant or prototypes are included in the plant expenditure category (see section 2.1.3) or prototype expenditure category (see section 2.1.4).

#### 2.1.1.1 Eligible salary expenditure

Eligible salary expenditure includes any components of an employee's total remuneration package that are itemised on their Pay As You Go (PAYG) Annual Payment Summary submitted to the Australian Taxation Office (ATO). Salary-sacrificed superannuation contributions are considered part of an employee's salary package where this amount exceeds that required by the *Superannuation Guarantee*. Employer contributions under the *Superannuation Guarantee* are included in the labour on-costs allowance (see section 2.1.1.3).

For *Program funding* claim purposes, the maximum salary for an employee, including packaged components, is \$150,000 in each full financial year (July-June) of the *Project* period. The maximum salary claim for an employee in a less-than-complete financial year that is part of the *Project* period is reduced proportionately from the \$150,000 maximum.

Any salary claim above these caps will not qualify as *Eligible Expenditure*, except where the *Customer* obtains the *Program Delegate*'s prior approval. The *Program Delegate* will assess all such requests on a case-by-case basis, and may take into account whether the additional salary is

warranted to attract an employee to the *Project*, and whether the additional salary expenditure is likely to aid the *Project* in meeting the *Program*'s policy objective.

#### 2.1.1.2 Calculation of eligible salary expenditure

Eligible salary costs are incurred only when an employee works directly on the agreed project. Salary costs must be apportioned using the formula below:

$$\text{Eligible salary in period} = \text{incurred salary in period} \times \frac{\text{actual time spent on project in period}}{\text{actual time employed by participant in period}}$$

'*Incurring salary in period*' is limited to no more than the equivalent of \$150,000 per financial year, as set out in section 2.1.1.1.

'*Actual time employed by customer in period*' includes:

- periods of leave such as annual and sick leave, and public holidays;
- overtime; and
- time spent on non-project activities.

#### 2.1.1.3 Labour on-costs

The on-costs associated with employees engaged on the *Project* are recognised as eligible labour expenditure. Labour on-costs include but are not limited to workers compensation insurance (for example, WorkCover), employer contributions to superannuation under the *Superannuation Guarantee*, annual leave accrual, long service leave accrual, payroll tax, and so on. Eligible labour on-costs are a set rate of 30 per cent of an employee's eligible salary costs, as calculated using the formula in section 2.1.1.2.

#### 2.1.1.4 Employee administrative overhead

The cost of administrative overheads for those employees engaged on the *Project* is eligible labour expenditure. Eligible employee administrative overhead expenses include incidental travel, a proportion of communications, accommodation, computing facilities, recruitment, printing and stationery, postage, office salaries, legal, accounting and auditing fees, and bank charges. Eligible employee administrative overheads are a set rate of 30 per cent of an employee's eligible salary costs, as calculated using the formula in section 2.1.1.2.

#### 2.1.1.5 Ineligible salary expenditure

##### (A) **Non-cash salary**

Labour costs based on an estimation of the employee's worth to the *Customer* where no cash changes hands and no amount is credited to a loan account or current account in the *Customer*'s accounts are not eligible labour expenditure.

##### (B) **Related parties**

Amounts credited by journal entry to the loan accounts or current accounts of principals and/or their relatives are not eligible labour expenditure until the individual income tax returns have been sighted by *Program* officers and the tax payable on the salary has been assessed by the ATO, or similar satisfactory evidence has been provided that income tax has been paid.

### 2.1.2 **Contract expenditure**

Eligible contract expenditure is the cost of any agreed *Project* activities performed for the *Customer* by:

- another organisation, or
- an individual engaged under separate contract.

**Note:** The cost of employees of consortium members directly working on the core elements of the *Project* (i.e. Labour expenditure) should be claimed by the *customer* as contract expenditure. This expenditure will only be deemed eligible if the expenditure is transferred to and paid for by the *Customer*. Employees of the *Customer* who are working directly on the *Project* should still be claimed under Labour expenditure 2.1.1.

To be eligible, all contractor *Project* work must be the subject of a prior written contract—for example, a formal agreement, letter or purchase order—which specifies the nature of the work to be performed for the *Customer* and the applicable fees, charges and other costs payable.

Invoices from contractors must provide a detailed description of the nature of the work, the hours and hourly rates involved, and any specific plant or prototype expenses incurred. Invoices must enable the *Program Delegate* to determine whether the proposed expenditure directly relates to the *Project*, would qualify as *Eligible Expenditure* if it was claimed directly by the *Customer* and is reasonable and commensurate for the activities performed.

Where a contractor is engaged in building plant or prototypes, the contractor's costs should be apportioned between:

- design costs, claimed as contract expenditure, and
- building costs, claimed as either plant expenditure (see section 2.1.3) or prototype expenditure (see section 2.1.4).

Contract costs for leadership and administrative contractors (such as contracted CEOs, CFOs, accountants and lawyers) are not *Eligible Expenditure* unless the *Customer* substantiates to the *Program's* satisfaction that these costs relate to performance of core elements of the *Project*.

#### 2.1.2.1 Contractors that are a related body corporate of the Customer

Where the contractor is a related body corporate of the *Customer*, eligible contract expenditure is limited to the measurable direct cost to the contractor of performing the contracted *Project* work transferred to the *Customer* with no profit margin attached, 'at cost'.

In accordance with the general conditions of the *Funding Agreement*, the *Customer* is required to ensure all *Project* contractors keep a record of the costs of their work on the *Project*. For purposes of verifying that contract expenses are purely 'at cost' (refer governing principles) and contain no element of profit the *Program* may require the *Customer* to obtain and provide a contractor's records of its costs of doing *Project* work. If such records are not provided the *Program* may deem the relevant contract expense not to be *Eligible Expenditure*.

#### 2.1.2.2 Calculation of eligible fees

Fees must be apportioned by using the following formula:

$$\text{Eligible fees in period} = \text{incurred fees in period} \times \frac{\text{actual time spent on project in period}}{\text{actual time contracted by participant in period}}$$

#### 2.1.2.3 Contractor administrative overhead

The cost of administrative overheads for certain contractors engaged on the *Project* is recognised as a component of eligible contract expenditure. Administrative overhead may be claimed for each contractor who regularly works a minimum of 35 hours per week at the *Customer's* premises, but not necessarily on *Project* activities. The contractor administrative overhead rate is a set rate of 20 per cent of the contractor's fee for work performed on project *Eligible Activity*, as calculated using the formula in section 2.1.2.2.

### 2.1.3 Plant expenditure

Plant is usually an input to the agreed *Project* or the tools or infrastructure used to pursue the agreed *Project*. Plant is likely to have a value or use outside the agreed *Project* and can be constructed or otherwise obtained with minimal technical risk or new learning.

The maximum amount of plant expenditure that can be claimed as *Eligible Expenditure* under *NACC-ISP* is 50 per cent of total *Eligible Expenditure*. Plant expenditure above this cap is not eligible except where the *Customer* obtains explicit approval from the *Program Delegate* at the time of application. *Customers* must present a strong argument in their application when seeking to claim plant expenditure above the 50 per cent cap. The *Program Delegate* will assess all such requests on a case-by-case basis taking into account how the request is likely to aid the *Project* in meeting the *Program's* objectives.

Expenditure on plant is *Eligible Expenditure* under *NACC-ISP* only for the proportion of time it is used for activities directly related to *JSF* application.

Running costs for plant are *Eligible Expenditure* but must be readily verifiable as contributing to the *JSF* application and may include items such as rent, light and power, and repairs and maintenance. In the case of constructed plant, running costs are *Eligible Expenditure* once fully constructed

#### 2.1.3.1 Newly purchased and/or constructed plant

The *Eligible Expenditure* that may be claimed on newly purchased and constructed plant can include either the purchase cost or the depreciation. To claim the cost of newly purchased or constructed plant as *Eligible Expenditure*, an item must be purchased within the agreed *Project* duration, otherwise only the *Depreciation* will be eligible.

*Depreciation* is defined as the decline in asset value—of an item of plant allowed through the Commissioner of Taxation's effective life schedules, according to the proportion of time for which it is used on the *Project*. In extraordinary situations, for instance where the plant is subject to heavy usage, and where this is in accordance with Commissioner of Taxation's rules, a higher rate of depreciation may be applied than is otherwise provided for by the effective life schedules.

Total *Depreciation* charges for each particular item of purchased or constructed plant, for the proportion and length of time it is used on the *Project*, can be claimed in full at the time of its deployment.

Leasehold improvements to a leased *Project* facility may be claimed as constructed plant *Eligible Expenditure* if the improvement cost is capitalised in the *Customer's* financial statements (balance sheet) and depreciated in the manner highlighted above.

The starting value for constructed plant depreciation calculations is the capitalised construction cost or capitalised leasehold improvement cost for the plant item in accordance with Australian Taxation Office requirements. Total depreciation charges for each particular item of constructed plant, for the proportion and length of time it is used on the *Project*, can be claimed in full at the time of its deployment.

The purchase of plant for use in an agreed *Project* is *Eligible Expenditure* under *NACC-ISP* unless that plant is sold prior to the end of the *Project* or within three years of the *Project* end date. Any item of purchased plant valued at \$50,000 (excluding GST) cannot be sold, transferred or disposed of without the prior consent of the Commonwealth. The Commonwealth

may impose conditions on that consent, including return of a proportion of the proceeds to the Commonwealth.

### 2.1.3.2 Pre-existing plant

The *Eligible Expenditure* that may be claimed on pre-existing plant is the depreciation.

*Depreciation* is defined as the decline in asset value—of an item of plant allowed through the Commissioner of Taxation’s effective life schedules, according to the proportion of time for which it is used on the *Project*. In extraordinary situations, for instance where the plant is subject to heavy usage, and where this is in accordance with Commissioner of Taxation’s rules, a higher rate of depreciation may be applied than is otherwise provided for by the effective life schedules.

Total *Depreciation* charges for each particular item of pre-existing plant, for the proportion and length of time it is used on the *Project*, can be claimed in full at the time of its deployment.

### 2.1.3.2 Hired/leased plant

*Eligible Expenditure* for hired, rented, or leased plant is the number of payment periods dedicated to the *Project* use multiplied by the period hiring fee. Where a plant is purchased under a hire purchase agreement, or a lease is used to finance the purchase of the plant, the cost of plant, excluding interest, is capitalised, and then depreciated in the manner set out in section 2.1.3.1.

Leasehold improvements to a leased *Project* facility may be claimed as constructed plant *Eligible Expenditure* if the improvement cost is capitalised in the *Customer’s* financial statements (balance sheet) and depreciated in the manner highlighted above. Refer to section 2.1.3.1 for more information on constructed plant.

The starting value for constructed plant depreciation calculations is the capitalised construction cost or capitalised leasehold improvement cost for the plant item in accordance with Australian Taxation Office requirements. Total depreciation charges for each particular item of constructed plant, for the proportion and length of time it is used on the *Project*, can be claimed in full at the time of its deployment.

## **2.1.4 Prototype expenditure**

Prototype expenditure is *Eligible Expenditure* only where the construction and use of the prototype in the *Project* contributes directly to proving the commercial viability of a new product, process or service. The *Program Delegate* may refuse to accept a prototype *Eligible Expenditure* claim where the number of prototypes and the scale of prototypes exceed the level needed to prove the concept(s) underpinning the *Project* and/or establish its commercial viability.

The total costs of constructing prototypes are included under this category, with the exceptions that:

- equipment or tools used in the construction of the prototype should be claimed as plant expenditure—see section 2.1.3
- the *Program Delegate* may determine that part or all of the prototype should be claimed as plant expenditure, consistent with the following approach:
  - If the prototype includes significant items of machinery, equipment or tools and these items have a value beyond the project period, then these items should be claimed as

depreciable plant items under the plant expenditure category—see section 2.1.3. Such items will normally be stand-alone modules that are acquired off the shelf or are constructed with a low level of technical risk.

Costs incurred in the construction of a number of identical prototypes are *Eligible Expenditure* only where a strong reason for multiples exist, such as to enable testing under varied operating conditions. Prototype expenditure includes the cost of materials used in testing a process or prototype.

The cost of prototypes constructed by the participant will be assessed on the same basis as constructed plant expenditure as set out in section 2.1.3.1. Once fully completed, running costs for prototypes are *Eligible Expenditure* but must be readily verifiable and may include items such as rent, light and power, and repairs and maintenance.

### **2.1.5 Intellectual property protection expenditure**

The eligibility criteria for the *Program* requires that the *Applicant* ensures they have access to and sufficient rights in any *IP* necessary to carry out the *Project* including any *IP* developed as part of the *Project*. Reasonable costs that protect *IP* that is related to the *Project* and that the *Customer* does or will directly own are *Eligible Expenditure* where that expenditure was incurred on or after the ‘Project Start Date’ specified in the *Funding Agreement*. These costs can include fees to a patent office for the cost of filing a patent application, patent search and examination fees, and annual patent maintenance fees. Costs charged by the Australian Government are not *Eligible Expenditure*.

Where *IP* resulting from the *Project* will be owned by an entity other than the *Applicant*, for example a parent company or other related entity, the costs of *IP* protection will not be *Eligible Expenditure* under the *Program*. However, in this case the costs associated with ensuring sufficient rights and access to the *IP* to ensure commercialisation, and the flow of project benefits to Australia, will be eligible, for example licensing fees.

Registering a trademark or a design is not *Eligible Expenditure*, unless otherwise agreed to by the *Program Delegate*. The cost of defending *IP* rights is not *Eligible Expenditure*, with the exception of legal expenses insurance as it relates to *IP*.

*IP* protection expenditure that can be claimed as *Eligible Expenditure* under the *Program* is generally limited to 10 per cent of total *Eligible Expenditure*. All *IP* protection expenditure above this cap will not qualify as *Eligible Expenditure*, except where the *Customer* obtains the *Program Delegate*’s prior approval. The *Program Delegate* will assess all such requests on a case-by-case basis, taking into account how the additional *IP* protection expenditure is likely to aid the project in meeting the *Program*’s policy objectives. A request for additional *IP* protection expenditure made after the expenditure has already been incurred will not be considered.

### **2.1.6 Collaborative project expenditure**

#### **2.1.6.1 Reimbursement of Eligible Expenditure in the case of Collaborative project expenditure**

Costs associated with initiating and maintaining a collaborative partnership may be claimed as *Eligible Expenditure* where the collaboration is likely to contribute to the successful completion of the *Project* and where the initiating costs are occurred on or after the ‘Project Start Date’ specified in the *Funding Agreement*.

Eligible collaboration expenditure may include:

- partnering/negotiation costs—such as brokering licensing or distribution agreements and establishment of consortia arrangements

- expert advice fees—such as for alliance formation
- travel costs—limited to accommodation and transport for purposes of collaboration and includes accommodation and transport for chain partners where identified
- whole-of-chain quality management audits.

Eligible collaboration expenditure does not include costs of managing relationships with contractors doing work on the *Project*. These expenses are captured by the contractor administrative overhead (see section 2.1.2.3).

If an *Applicant* does not identify any collaboration costs at the time of application, this head of expenditure is not available subsequently during the *Project* period unless the *Program Delegate* approves a request from the *Customer* to make it available. The *Program Delegate* will assess all such requests on a case by case basis taking into account how collaborative expenditure is likely to aid the project in meeting the *Program's* policy objectives.

#### 2.1.6.2 Eligible Expenditure incurred by consortium members is not automatically Collaborative project expenditure

*Project* work performed or purchases made by consortium members are not to be claimed under the 'Collaborative project expenditure' head of expenditure, unless they are costs associated with maintaining a collaborative partnership.

Where there is 'Collaborative project expenditure' incurred in respect to a consortium which has formed for the sake of the *Project*, these costs are costs associated with maintaining a collaborative partnership. (However, since *Eligible Expenditure* can only be incurred from the 'Project Start Date', the costs of establishing such a consortium may usually be incurred too early to be claimed as *Eligible Expenditure*.)

In order for consortium members to be reimbursed for other *Eligible Expenditure* incurred on a *Program* project, consortium members must invoice the *Customer* for the amount incurred, and upon payment of the invoice the funding recipient may then claim the *Eligible Expenditure* under the appropriate head of expenditure. This *Eligible Expenditure* claim must not include any element of intra-group profit or mark-up. Reimbursement is not automatic and the Australian Government reserves the right to review the costs and claims. Refer to the *Eligible Expenditure* governing principles for more information.

#### 2.1.7 Acquisition and adaptation of new technology

Acquisition of new technology, which is defined as technology new to the applicant, is *Eligible Expenditure* where subsequent adaptation of that technology will contribute directly to completion of the agreed *Project*.

Eligible new technology acquisition expenditure is limited to 10 per cent of total *Eligible Expenditure*. All new technology acquisition expenditure above this cap will not qualify as *Eligible Expenditure*, except where the *Customer* has obtained the *Program Delegate's* prior approval. The *Program Delegate* will assess all such requests on a case-by-case basis, taking into account how the additional technology acquisition expenditure is likely to aid the *Project* in meeting the *Program's* policy objectives.

*Eligible Expenditure* on this activity includes, but is not limited to:

- technology audit fees
- network membership fees
- expert advice fees
- process or systems changes to take into account the new technology

- information dissemination relating to technology acquisition that is part of the project.

Where access to technology or *IP* is essential for the conduct of the *Project*, licence fees or purchase costs to access such technology or *IP* may qualify as *Eligible Expenditure*. *Applicants* should raise such costs when discussing their budget calculator with the *DIIC* prior to submitting an application.

Independent valuations of purchased technology, including *IP*, are needed to substantiate the cost of any expenditure claimed. Where the *Customer* licences technology or *IP* from a related body corporate, expenditure must be calculated 'at cost' (refer governing principles).

If acquired technology has a value or usage outside the agreed *Project* then acquisition costs must be apportioned on the basis of agreed *Project* -related usage of the purchased technology.

In the event that the acquired technology is in the form of plant expenditure or purchased capital goods, this item of *Eligible Expenditure* will be subject to the same depreciation treatment as set out in section 2.1.3.1.

### 2.1.8 Other expenditure

This *Eligible Expenditure* category captures most miscellaneous costs not covered by any of the above categories. These may constitute *Eligible Expenditure* to the extent that they are a direct cost to the agreed *Project*, and may include:

- substantial travel on the agreed *Project*—limited to the reasonable cost of accommodation and transportation required to conduct *Project* activities in Australia and overseas
  - if specific travel costs are not identified in the *Application*, this 'other expenditure' is not eligible during the *Project* period unless the *Program Delegate* approves a request from the *Customer* prior to the expenses being incurred
  - 'reasonable cost of transportation' for air transportation is an economy class fare for each sector travelled; where non-economy class air transport is used only the equivalent of an economy fare for that sector is *Eligible Expenditure*. Where non-economy class air transport is used, the *Customer* will need to retain evidence showing what an economy air fare cost at the time of travel
- transportation costs of plant and equipment or new technology acquired for the *Project* where those costs are not included in the purchase cost
- training costs—where the skills acquired are specific to the requirements of an *Project*, approved in the *Funding Agreement*, and are not covered under other *Heads of Expenditure*
- product liability insurance in relation to a *Project*—where this insurance is a normal and essential cost of undertaking the *Project*. If the product liability insurance has a value or usage outside the *Project* the cost of the insurance must be apportioned on the basis of the proportion of the insurance directed to covering the *Project*.

## 2.2 Treatment of certain activities

This section sets out the *Eligible Expenditure* treatment of certain *Project* activities. *Applicants* and *Customers* must record eligible costs of these *Project* activities in applications and *Project* reports under the relevant *Head(s) of Expenditure*.

### 2.2.1 Overseas activities

Eligible overseas activities expenditure is *Eligible Expenditure* on *Project* activities that are not undertaken in Australia by a *Customer's* staff, contractors or subcontractors. This includes all types of expenditure directly related to such activities, including on-costs of plant.

Plant and other goods that are purchased overseas are not necessarily treated as overseas expenditure. Where plant is used, not where it is purchased, is the basis of treating plant expenditure as either overseas or domestic expenditure.

Eligible overseas activities expenditure generally is limited to 25 per cent of total *Eligible Expenditure*. All overseas activities expenditure above this cap will not qualify as *Eligible Expenditure*, except where the *Customer* obtains the *Program Delegate*'s prior approval. The *Program Delegate* will assess all such requests on a case-by-case basis, taking into account factors such as:

- the availability of domestic resources and facilities
- the appropriateness of carrying out activities overseas rather than within Australia
- cost implications
- how the additional overseas activities expenditure is likely to aid the *Project* in meeting the Program's policy objective.

The *Program Delegate* may seek advice from the *Review Panel* when making a decision on whether to allow a claim for more than 25 per cent of an agreed *project's Eligible Expenditure* on overseas activities.

### **2.2.2 Product/process design activities**

The costs of product/process design activities are eligible where they relate to turning the prototype of a working product or process into a commercially viable design. This includes using engineering expertise to determine prototype structure, function and materials. These costs may include, for example, development of new or improved:

- measurement and control systems
- operational approaches—for example, through process optimisation or increased prototype functionality
- materials handling techniques

The design costs of routine or periodic alterations to existing products, production lines, manufacturing processes, services, and other on-going operations are *Eligible Expenditure* only if they relate directly to the *Project*.

### **2.2.3 Trial production runs**

The cost of a number of trial production runs sufficient to demonstrate commercial viability is *Eligible Expenditure*. The total costs of the trial production runs are *Eligible Expenditure*. However, the cost of equipment or tools used in the construction of the run is to be claimed under plant expenditure (section 2.1.3).

*Eligible Expenditure* under this category includes costs incurred in validation, establishing efficacy, demonstration of capability, scale-up, and development of evidence of the stability or reproducibility of processes.

### **2.2.4 Demonstration activities**

The cost of activities to demonstrate the technical capabilities of the product, process or service that is the outcome of the agreed *Project* may be *Eligible Expenditure*. *Eligible activities* include demonstration of working prototypes to determine if they require further development.

Demonstration for the sole purposes of marketing, such as at trade shows, is only eligible if the demonstration is for prospective buyers within the *JSF* supply chain.

### 2.2.5 Market analysis and research activities

The costs of market analysis and research activities that directly relate to the achievement of the *Project* outcome are *Eligible Expenditure*. Such activities must aim to contribute to the development of a product, process or service.

Where conducted by contractors, these costs should be claimed under contract expenditure. Where undertaken by *Project* personnel, they should be claimed under labour expenditure.

### 2.2.6 Audit certificate

The preparation of an audit certificate is *Eligible Expenditure*. It is restricted to a maximum of one per cent of total *Eligible Expenditure* on agreed *Project* costs for all audit certificates, unless otherwise agreed to by the *Program Delegate*.

## 3. Activities not funded under the *Program*

The cost of some activities conducted as part of an agreed *Project* may not be *Eligible Expenditure*. A *Customer* must ensure it has adequate funds to meet the cost of any such ineligible expenditure associated with its project.

Ineligible activities include but are not limited to:

- preparing the *Program funding* application, any *Funding Agreement* variation requests and any *Project* reports (except costs of Audit Certificates as set out in section 2.2.6)
- obtaining regulations and standards compliance—such as certification and accreditation fees, and other direct payments to regulators, certification or accreditation bodies
  - however, costs of designing and testing a product, process or service to ensure that it is able to comply with relevant regulations and standards are *Eligible Expenditure*
- prospecting, exploring or drilling for minerals, petroleum or natural gas for the purpose of discovering deposits, determining more precisely the location of deposits or determining the size or quality of deposits
- quality control activities and achieving quality control accreditation
- making donations
- opportunity costs relating to forgone production and production downtime arising from the allocation of resources to the *Project*
- obtaining resources used on the *Project*—such as interest on loans, job advertising and recruiting, and transporting goods to be used on the *Project*
- any activity related to the reproduction of a commercial product or process by a physical examination of an existing system or from plans, blueprints, detailed specifications or publicly available information
- activities that an *Applicant* has already carried out under another government Program in the two years prior to applying for the *Program*.

This list is not exhaustive. Other specific expenditure may be ineligible because the *Program Delegate* decides it does not directly support the achievement of the planned outcomes of the *Project* or to be contrary to the spirit and intention of the *Program*.

## Appendix 4: Australian Universities and Publicly Funded Research Agencies

Australian Universities	
<p><i>Higher Education Support Act 2003</i></p> <p><i>Table A Providers:</i></p> <p>Central Queensland University            Charles Darwin University            Charles Sturt University            Curtin University of Technology            Deakin University            Edith Cowan University            Griffith University            James Cook University            La Trobe University            Macquarie University            Monash University            Murdoch University            Queensland University of Technology            Royal Melbourne Institute of Technology            Southern Cross University            Swinburne University of Technology            The Australian National University            The Flinders University of South Australia            The University of Adelaide            The University of Melbourne            The University of Queensland</p>	<p>The University of Sydney            The University of Western Australia            University of Ballarat            University of Canberra            University of Newcastle            University of New England            University of New South Wales            University of South Australia            University of Southern Queensland            University of Tasmania            University of Technology, Sydney            University of the Sunshine Coast            University of Western Sydney            University of Wollongong            Victoria University of Technology            Australian Catholic University            Australian Maritime College            Batchelor Institute of Indigenous Tertiary Education</p> <p><i>Table B Providers:</i></p> <p>Bond University            The University of Notre Dame Australia            Melbourne College of Divinity</p>
Publicly Funded Research Agencies	
<p><a href="#">Australian Institute of Marine Science (AIMS)</a></p> <p><a href="#">Australian Nuclear Science &amp; Technology Organisation (ANSTO)</a></p> <p><a href="#">Commonwealth Scientific and Industrial Research Organisation (CSIRO)</a></p> <p><a href="#">Defence Science and Technology Organisation (DSTO)</a></p>	

## Appendix 5: Joint Strike Fighter (JSF) Primes and Original Equipment Manufacturers (OEMs)

The following are the *JSF Primes* and *OEMs*, correct as of 2 July 2011.

These listings are subject to change; for an up to date list please contact the Enterprise Connect *Defence Industry Innovation Centre*.

### JSF Primes

Lockheed Martin Aeronautics Corporation  
Pratt & Whitney

### OEMs

- AMETEK (Garden City, NY)
- BAES (Johnson City, NY)
- BAES (Nashua, NH)
- BAES (Samlesbury, UK)
- BAES (UK)
- Ball Aerospace (Denver, CO)
- Curtiss Wright (Shelby, NC)
- Eaton Fluid Conveyances (Jackson, NY)
- Eaton Hydraulics (Jackson, MS)
- Fokker Elmo
- GD ATP (Burlington, VT)
- GE Aviation (Cheltenham, UK)
- GE Aviation (Grand Rapids, MI)
- Goodrich Actuation (UK)
- Goodrich Landing Gear (Cleveland, OH)
- Goodrich Sensors (Burnsville, MN)
- Hamilton Sundstrand (Rockford, IL)
- Harris (Melbourne, FL)
- Heroux-Devtek (Longueuil, Canada)
- Honeywell (Phoenix, Arizona)
- Honeywell (Yeovil)
- ITT - formerly EDO (Amityville, NY)
- L3 Electroynamics (Rolling Meadows, IL)
- L3Com Displays
- Lockheed Martin Aeronautics (Fort Worth, TX)
- Lockheed Martin Global Training and Logistics (Orlando, FL)
- Lockheed Martin Missiles & Fire Control (Orlando, FL)
- Lockheed Martin Missions Systems & Sensors (Owego, NY)
- LSI (East Aurora, NY)
- Martin Baker (High Denham, UK)
- Marvin Engineering (Los Angeles, CA)
- Moog (East Aurora, NY)
- Moog (Torrance, CA)
- Northrup Grumman (Baltimore, MD)
- Northrup Grumman (El Segundo, CA)
- Northrup Grumman (Rolling Meadows, IL)
- Northrup Grumman Missions Systems (San Diego, CA)
- Parker (Irvine, CA)
- Parker Air & Fuel (Irvine, CA)
- RD Beaufort (Birkenhead, UK)
- VSI and Elbit (San Jose, CA/ Haifa, IS)

## Appendix 6: Guide to managing your Funding Agreement

Note: For the avoidance of doubt, in the *Funding Agreement*, the *Customer* is referred to as the “Grantee”, and *Program funding* is referred to as the “Grant”.

### 1 Terms and conditions of the Funding Agreement

The *Funding Agreement* comprises the general conditions and special conditions specific to the *Customer*.

If a *Customer* does not comply with any of these conditions it will be in breach of the *Funding Agreement*. Depending on the nature of the breach, the *Program Delegate* or *AusIndustry* may:

- withhold all future payments of *Program funding* until the breach is remedied;
- require repayment of some or all of the *Program funding* paid to the *Customer*, with interest; and/or
- terminate the *Funding Agreement*.

Further details of the terms and conditions of the *Funding Agreement*, including the consequences of breaches of the *Funding Agreement* are set out below.

#### 1.1 General conditions of the Funding Agreement

The general conditions of the *Funding Agreement* contain terms that deal with matters including the following:

- payments of *Program funding*;
- conduct of the *Project*;
- *Project* outcomes;
- evaluation;
- acquittal of the grant (ie demonstrating *Eligible Expenditure* that meets any matching funding requirements);
- termination rights;
- requirement to acknowledge any Commonwealth contribution in publicity material; and
- dealing with rights (including *IP*).

#### 1.2 Special conditions

The special conditions to be included in a *Funding Agreement* are unique to the *Customer*, and are decided by the *Program Delegate* (though they may be negotiated with the *Applicant* prior to signing the *Funding Agreement*). Any offer of *Program funding* will include details of the special conditions that will be required to be included in the *Funding Agreement* if *Program funding* is to be granted.

The special conditions of the *Funding Agreement* will, for the most part, be set out in the schedule, which will include:

- the parties to the *Funding Agreement* and their contact details
- the agreed *Project*
- the ‘Project Start Date’ and ‘Project End Date’ for the agreed *Project*
- the agreed performance milestones for the *Project*
- the budget of *Eligible Expenditure* for the *Project*
- the total grant amount (ie *Program funding*) payable
- the maximum amount payable for each financial year (*annual capped grant amounts*)
- the reporting schedule (due dates for reports)
- items of confidential information disclosed to *AusIndustry*, and
- the special conditions that apply to the project.

Other special conditions may include:

- The Commonwealth’s execution of the *Funding Agreement* is made conditional on the *Applicant* completing certain actions.
- Progress payments are made conditional on the successful completion of particular milestones.
- The *Customer* is required to submit status reports at specified times outlining progress towards to the achievement of particular outcomes relevant to the *Project*, in addition to the regular six monthly reports.

### **1.3 Funding Agreements for Collaborative projects**

Where *Program funding* has been sought on behalf of a consortium, the lead entity will be required to sign the *Funding Agreement*. That lead entity will thereby commit to the terms and conditions of the *Funding Agreement* and any legal and financial obligations arising from the *Funding Agreement*.

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## **2 Key obligations under the Funding Agreement**

Both the *Customer* and the Commonwealth represented by *AusIndustry* will have obligations throughout the term of the *Funding Agreement*, and in some cases continuing.

This section provides an overview of key obligations under the *Funding Agreement*. However, *Applicants* should ensure they read the *Funding Agreement* carefully, as that document is the primary source of their rights and obligations irrespective of these *Customer Guidelines*.

*Applicants* or *Customers* should direct any questions about requirements under the *Program* to *AusIndustry*.

## 2.1 Reporting and Evaluation

Under the terms of the *Funding Agreement* the *Customer* must provide regular reports to *AusIndustry*. These reports are used to identify the progress of the *Project* and *Eligible Expenditure* for a given reporting period.

Regular reports required of the *Customer* will include:

- *Project Progress Reports* – every six months during the course of the *Project* unless otherwise stipulated in the *Funding Agreement*.
- *Project Completion Report* – the final *Project* progress report, replacing the progress report which would be due at the end of the last six months of the *Project*.
- *Audited Financial Report* – supplied with the *Project* completion report.

Additional reporting requirements may be stipulated by the *Program Delegate* at the time the application is approved and will be made known to the *applicant* with the formal grant offer.

If for any reason the *Customer* cannot meet its reporting obligations, it must contact *AusIndustry* as soon as possible. If the *Customer* does not provide *AusIndustry* with a report when it falls due it will be in breach of the *Funding Agreement*.

*Project* reports must be signed by a duly authorised employee or officer of the *Customer*, having operational responsibility for, and a detailed working knowledge of, the contents of each report.

*Customers* will be provided with the reporting template by *AusIndustry*.

### Bi-annual Project progress reports

*Customers* are required to submit, within 30 days of the end of a reporting period, a six monthly *Project* progress report together with a full version of the Project budget calculator.

*Project* progress reports are due as follows:

- June report (for the period 1 January to 30 June: due 30 July)
- December report (for the period 1 July to 31 December): due 30 January

The six month progress report enables the *Commonwealth* to review the progress on the agreed *Project*. It is also the method by which the *Customer* claims a progress payment of *Program funding*. The report is designed to show the actual *Eligible Expenditure* (by *Heads of expenditure*) for the *current review period*; and includes the budgeted *Eligible Expenditure* (by *Heads of expenditure*) for the *next review period*. Subject to the progress made, the progress payment will include an advance component for the *next review period*.

In preparing a progress report, *Customers* may reallocate budgeted expenditure in respect of categories of expenditure in the budget, or vary work methods as it considers necessary to undertake and complete the *Project*. Such changes are possible, provided there are no material changes to: the *Project*; the milestones set out in the *Funding*

*Agreement* or the *Project* outcomes; and do not cause the *Customer* to be in breach of the *Funding Agreement*.

If a report is missing any information, or if there is uncertainty over the information provided, the *Customer* will be contacted by *AusIndustry* and may be asked for further information. The *Customer* must provide any missing or clarifying information within 30 days of *AusIndustry's* request. *Program funding* progress payments cannot be made if issues arising from a *Project* progress report are unresolved.

Prior to referring the *Project* progress report to the *Program Manager*, *AusIndustry* will request an assessment against the *Project* milestones by a *DIIC Business Adviser*. The *Program Manager* will determine if the report should also be referred to the *Review Panel* for further assessment, before a decision is taken on behalf of the *Program Delegate* in regard to the *Program funding* progress payments and/or other action.

### **Project completion report and audited financial report**

The *Project* completion report, together with the *Project* budget calculator and audited financial report, are to be submitted to *AusIndustry* within 90 days after the *Project* completion date. The *Project* completion report replaces the final six month progress report due for the *Project*.

The completion report is used to acquit final payments and review the success of the *Project*. The report also allows the *Customer* to provide feedback on the impact of the *Program funding* on the *Project* and the *Customer* generally.

Preparation of the audit report will involve an independent audit of *Eligible Expenditure* claimed during the relevant audit period, and confirmation whether all *Eligible Expenditure* has been paid within 3 months of the end of the relevant period.

The audit report must be prepared by an independent auditor. This will include a member of the Institute of Chartered Accountants, a member of CPA Australia or a Public Practice Certified Member of the National Institute of Accountants, not being an employee, shareholder, director or other officeholder, related entity or associate of the *Customer*. Further, the independent auditor preparing the audit report must not be a person that has had any involvement in the preparation of the application or any other report required under the *Funding Agreement*.

Prior to referring the *Project* completion report and audited financial report to the *Program Manager*, *AusIndustry* will request an assessment against the *Project* milestones by a *DIIC Business Adviser*. The *Program Manager* will determine if the report should also be referred to the *Review Panel* for further assessment, before a decision is taken on behalf of the *Program Delegate*. The *Program Manager*, on behalf of the *Program Delegate*, will approve any final payment due within 30 days of receiving the relevant reports. The decision by the *Program Manager* will be based on the reports supplied as well as an assessment from the *Customer's DIIC Business Adviser* and the *Review Panel*, as appropriate.

## 2.2 Payments of Program funding

The *DMO* will pay to *Customers* all *Program funding* payments by direct credit into a nominated bank account. The *Funding Agreement* will provide the specific requirements for this account. Payments of *Program funding* attract the *Goods and Services Tax (GST)* and payments shall take account of *GST* (refer to section 6.2 of these *Customer Guidelines*).

As mentioned in section 3.1 of the *Customer Guidelines*, *Program funding* payments to *CRC Customers* cannot be made into a bank account set up to receive contributions from *CRC Customers*. *CRC Customers* will need to identify an alternate bank account to receive *Program funding* payments.

### Initial payment

The *DMO* will make an initial payment to the *Customer* following execution of the *Funding Agreement* between the *Customer* and *AusIndustry*. This payment will be based on budgeted *Eligible Expenditure* for the first period of the *Project*. A *Customer* is not entitled to claim any expenditure incurred prior to the 'Project Start Date' specified in the *Funding Agreement*. (The 'Project Start Date' cannot be before the *Acceptance Date*.)

### Progress payments

Unless otherwise stipulated in the *Funding Agreement*, claims for progress payments of *Program funding* are made by completing the six monthly *Project* progress report (or the *Project* completion report for the last six months of the *Project*).

Progress payments will be paid every six months, subject to:

- satisfactory progress on the *Project*;
- the *Customer* meeting all other obligations under the *Funding Agreement* (including the submission of relevant reports); and
- the *Program Manager* being satisfied that the various matters described in the *Funding Agreement* have been met.

Progress payments may be made in advance based on the *Customer's* estimate of its *Eligible Expenditure* for the *next review period*.

Generally, the amount of each payment will be calculated based on actual *Eligible Expenditure* incurred to the end of the *current review period*, and the *Customer's* estimate of *Eligible Expenditure* for the *next review period*. For example, a progress payment is calculated as follows:

	Total actual <i>Eligible Expenditure</i> incurred up to end of <i>current review period</i>
<b>Plus</b>	Estimated <i>Eligible Expenditure</i> for <i>next review period</i>

<b>multiplied by</b>	Grant percentage (portion of total <i>Eligible Expenditure</i> to be funded from <i>Program funding</i> , up to 50%)
<b>Less</b>	Payments made so far
<b>Equals</b>	Payment due

However, in some instances the *Customer* may be paid an amount other than one calculated as above, or the *Customer* may be paid no amount at all. These circumstances include where:

- the independent audit report on an annual financial report disputes any of the *Customer's* previous claims of *Eligible Expenditure*;
- in any financial year, the *Customer* would receive more than the *annual capped grant amount* for that year set out in Schedule 1 of the *Funding Agreement*;
- if applicable, the *Customer* did not demonstrate compliance with any special condition of the *Funding Agreement*;
- the proportion of overseas expenditure on the *Project* exceeds 25 per cent of total *Eligible Expenditure* (or any higher approved maximum percentage);\*
- the proportion of new technology acquisition expenditure on the *Project* exceeds 10 per cent of total *Eligible Expenditure* (or any higher approved maximum percentage);\*
- the proportion of plant and equipment expenditure on the *Project* exceeds 50 per cent of total *Eligible Expenditure* (or any higher approved maximum percentage);\*
- the proportion of IP protection expenditure on the *Project* exceeds 10 per cent of total *Eligible Expenditure* (or any higher approved maximum percentage);\*
- the *Customer* would receive more than the total approved *Program funding*;
- the *Customer* is in dispute with any subcontractor or consortium/collaborative partners engaged to perform work on the *Project* and that dispute relates to the work performed or to be performed on the *Project*; and
- the payment includes or comprises the ‘retention amount’ specified in the *Funding Agreement*.

\*Note: Expenditure exceeding the relevant threshold without the *Program Delegate's* approval will not qualify as *Eligible Expenditure*.

### **Final payment**

At the conclusion of the *Project* a final payment based on total *Eligible Expenditure* incurred on the *Project* will be made. The final payment is subject to the same conditions discussed above in relation to progress payments generally.

The *Funding Agreement* will specifically provide that the *Customer* is not entitled to payment of the ‘retention amount’ (generally 5 per cent of the *Program Funding*) until it has completed the *Project* and submitted all reports due under the *Funding Agreement*.

Note: Any expenditure incurred on the *Project* will not qualify as *Eligible Expenditure* under the *Funding Agreement* unless paid within 3 months of the project end date.

### **Inaccurate claims**

Notwithstanding the making of any progress payment, the *Program Delegate* through his/her authorised officers reserves the right to re-examine expenditure claims, to seek further information and to audit claims and payments as detailed under the terms of the *Funding Agreement*.

In the event of an overpayment, the *Program Delegate* may through his/her authorised officers seek to recover the amounts and take any other action provided for under the *Funding Agreement* or under the common law. To minimise potential repayment of any *Program funding* paid, *Customers* should ensure at all times that payment claims are accurate and appropriate. The *Program Delegate* also recommends that the *Customer* promptly notifies their *DIIC Business Adviser* or *AusIndustry* in the event that they become aware of any discrepancies in previous *Eligible Expenditure* claims.

## **2.3 Keeping AusIndustry informed**

The *Funding Agreement* requires the *Customer* to keep *AusIndustry* (or the Commonwealth) informed of certain changes or issues related to the *Funding Agreement*. If a *Customer* fails to contact *DIIC* or *AusIndustry* in such cases the *Program Manager* may seek termination of the *Funding Agreement* and may also seek repayment of up to 100 per cent of the *Program funding* if they consider that the objectives of the *Program* have been, or may be, adversely affected

(The following section explains the process of seeking a formal variation to a *Funding Agreement* which will be necessary in certain circumstances.)

### **Warranties under the Funding Agreement**

If a *Customer* becomes aware of a breach of warranty under the *Funding Agreement*, it must immediately notify *AusIndustry* of that breach. *AusIndustry*, in consultation with the *Program Manager*, will work with the *Customer* in managing resolution of the breach.

### **Dealing with project intellectual property**

The *Funding Agreement* states that the *Customer* must submit a request to, and receive the written consent of, *AusIndustry* before dealing with *Project IP*. This includes the transfer of *Project intellectual property* to another entity and/or a change in company control<sup>1</sup> event.

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<sup>1</sup> For the purposes of the *Program*, 'control' of a company is defined by the *Corporations Act 2001* (Commonwealth). In practical terms, a change in company control can include:

- sale of the customer company to another firm;
- establishment by the customer of a new parent or holding company;
- initial listing on the stock exchange or raising capital through further public share offerings;
- sale of a significant bundle of shares on the stock exchange; and

In assessing such a request, the *Program Manager* will take into account any changes to the agreed *Project* outcomes arising from the *Project*.

This obligation applies only during the term of the *Project*.

### **Change in *Customer* details**

The *Customer* should promptly notify *AusIndustry* in writing of any change in:

- company name;
- company registered office address;
- nominated contact details - for example, name, telephone number, email address; and
- details of the bank account into which the *Program funding* is paid.

### **Sale of plant and equipment**

The purchase of plant and equipment<sup>2</sup> for use in an agreed *Project* is *Eligible Expenditure* under the *Program* unless that plant and equipment is sold prior to the end of the *Project* or within three years of the project end date.

Where plant and equipment is sold during the *Project* period or up to three years after the project end date, the *Program Manager* will consider all such events on a case by case basis and may require repayment of *Eligible Expenditure* claimed against the purchase costs.

If a *Customer* is proposing to sell its plant or equipment, it should immediately notify *AusIndustry* of its intention and the reasons for the proposed sale. *AusIndustry*, in consultation with the *Program Manager*, will work with the *Customer* in managing resolution of the issue.

## **2.4 Program exit**

The *Program* officers expect that some *Customers* will realise during the term of their *Funding Agreement* that their *Project* will not achieve its objectives. This could be because the *Project* failed to produce an expected outcome, or the commercial prospects for the new product, process or service have substantially changed such that persevering with the *Project* no longer makes commercial sense. In such cases, *Customers* may voluntarily terminate their *Project*.

*Customers* who exit the *Program* may be eligible to reapply for *Program funding* with a new *Project* plan. The *Program* encourages voluntary exit where appropriate and will view such as a positive indicator of the management team's capability in any future application for *Program funding*.

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• sale of the parent company.

<sup>2</sup> Plant and equipment will be "Assets" for the purposes of the *Funding Agreement*.

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### **3 Variation of a Funding Agreement**

*Customers* are likely to become aware of changing circumstances as the *Project* proceeds, which impact on the objectives, completion and/or outcomes of the *Project*. Under the *Funding Agreement* the *Customer* is at risk of breaching the *Funding Agreement* if a necessary variation is not sought from and agreed to by *AusIndustry*.

In this section, details are provided of the process for varying a *Funding Agreement*, and what a *Customer* will need to show to be granted a variation in respect to:

- *the Project* period;
- the amount of *Program funding* or *annual capped grant amounts*;
- the *Project* plan; and
- certain other variations.

#### **3.1 Process for varying the Funding Agreement**

Before submitting any formal request to vary the *Funding Agreement*, *Customers* should discuss the impact of changed circumstances on their *Project* and *Funding Agreement* with a *DIIC Business Adviser*.

The *Business Adviser* will assist the *Customer* in determining whether the changes in circumstances require a formal variation to the *Funding Agreement*.

If the *Customer* wishes to make any changes to the agreed *Project*, it must apply for a formal variation to the *Funding Agreement*. This is done using the ‘Application to vary’ template, which is available from the *DIIC Business Adviser* or *AusIndustry*.

Applications to vary the *Funding Agreement* must be received before the project end date.

Variation requests are submitted to *AusIndustry* and are decided by the *Program Manager*, on behalf of the *Program Delegate*. The *Program Manager*, in deciding whether to grant a variation request, may seek the views of the *DIIC Business Adviser*, *AusIndustry* and/or the *Review Panel*. *Customers* will be notified by *AusIndustry* in writing of the *Program Manager*’s decision.

A *Funding Agreement* must not be treated as varied until the *Customer* receives written notice from *AusIndustry* of approval of the variation request. Otherwise, the *Customer* may be in breach of the *Funding Agreement*. (Please refer to section 1 of this Appendix for details of the consequences of a breach.)

In assessing a variation request, the need for funding; the potential for the *Project* to be commercially successful (with or without the variation); the availability of *Program funds*; and the *Customer*’s ongoing ability to fund its share of *Project* costs are all factors that may be taken into account.

#### **3.2 Extension of end of Project period**

An application to extend the *Project* period must, as a minimum, demonstrate that:

- the extension, if approved, will significantly improve the outcomes of the *Project*; or
- the *Customer* has experienced delays in completing or progressing the *Project* due to circumstances that were unforeseen and/or beyond its control.

*Project* periods can be extended, depending on the type of grant. However, the *Project* period cannot extend beyond the *Program End Date*.

- *Stream A Grants* – *Projects* are for up to 3 years. Subject to the *Program Manager's* approval, *Customers* can apply to extend their *Project* by up to an additional 12 months.
- *Stream B Grants* – *Projects* are for up to 18 months. Subject to the *Program Manager's* approval, *Customers* can apply to extend their *Project* by up to an additional six months.
- *Stream C Grants* – *Projects* are for up to 3 years.

Applications which would extend a *Project* beyond these limits will only be considered under extenuating circumstances. **Applications to extend beyond the *Program End Date* will not be considered under any circumstance.**

The *Program Delegate* has the sole discretion to approve or reject any application to extend the *Project* period.

### **3.3 Variation to increase Program funding and/or any annual capped grant amounts**

*Customers* who were awarded less than the maximum grant allowable under the relevant type of grant may seek additional funds up to the maximum allowable as set out in section 1.2 of these *Customer Guidelines*. *Customers* may also apply to have the *annual capped grant amount* increased.

An application to increase the amount of *Program funding* and/or any *annual capped grant amount* must, as a minimum, demonstrate that:

- the increase, if approved, will significantly improve the outcomes of the *Project*; or
- *Project* costs have increased as a result of circumstances (such as supplier price increases) that were unforeseen and/or beyond the *Customer's* control.

Such applications must also be accompanied by a revised budget of *Eligible Expenditure* (using the *Project* budget calculator) for the remainder of the *Project*.

### **3.4 The Project plan**

The *Funding Agreement* will require a *Customer* to immediately notify the Commonwealth (giving reasons) if at any time the *Customer* believes its capacity to achieve the *Project* outcomes are compromised or there is a change to the *Project* plan.

If a *Customer* fails to notify the Commonwealth of these changes, the *Program Manager* may seek repayment of up to 100 per cent of the *Program funding* paid, plus interest.

An application to change the *Project* plan (including changes to the *Project* milestones) must, as a minimum, demonstrate that the change is consistent with the planned outcomes of the *Project*.

Change to the *Project* plan should also involve the *Project* (or its outcomes) continuing to be exploited in a manner that will provide the agreed *Project* outcomes claimed in the original *Program* application.

A change in the *Project* plan might involve a change in any one or more of the following:

- the objectives and/or outcomes of the agreed *Project*; or
- *IP* ownership and/or exploitation arrangements.

In considering the application to vary the *Funding Agreement*, the *Program Manager* will ask the *Review Panel* to revisit the claims in the original application and assess if those claims will still be delivered by the *Project* if the change in the *Project* plan is approved.

### **3.5 Other variations**

Other circumstances where a formal variation of the *Funding Agreement* will be required are set out below.

#### **Exceeding Eligible Expenditure limits.**

A variation request is required if the customer wishes to claim as *Eligible Expenditure* above the approved limits for:

- *Intellectual Property* expenditure;
- overseas expenditure;
- acquisition of plant and equipment expenditure; and/or
- new technology acquisition expenditure.

A variation request is also required if the customer wishes to claim *Eligible Expenditure* under a different *Head of Expenditure* than originally specified.

#### **Change in key personnel**

Where key personnel are listed in Schedule 1 of the *Funding Agreement*, a formal variation of the *Funding Agreement* must be obtained in respect to changes to these key personnel.

#### **Change in consortium members**

Where consortium members are listed in Schedule 1 of the *Funding Agreement*, a formal variation of the *Funding Agreement* must be obtained in respect to changes to these consortium members.